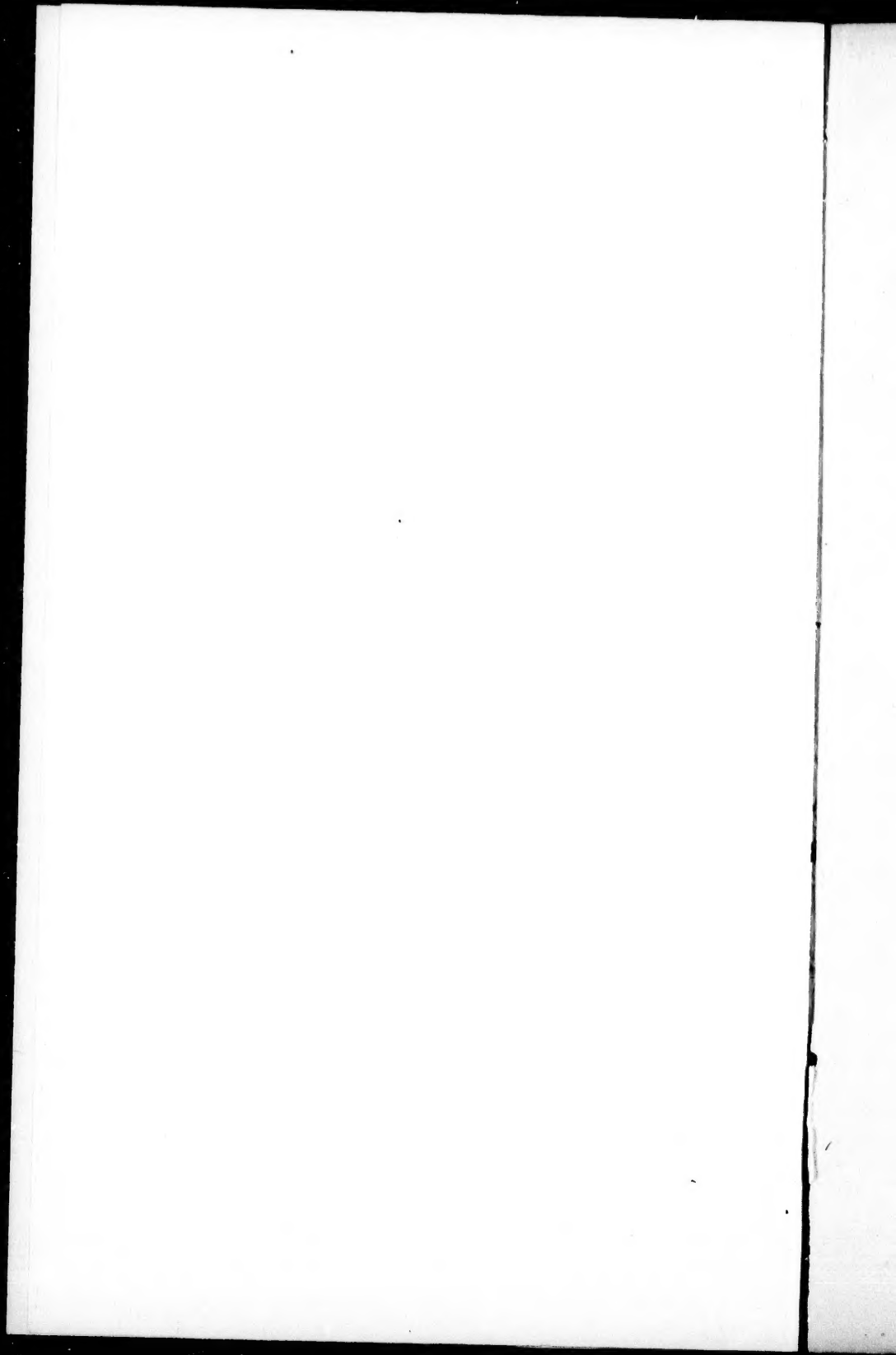




REMARKS
UPON THE
DISPUTED POINTS OF BOUNDARY
UNDER THE
FIFTH ARTICLE OF THE TREATY OF GHENT,
PRINCIPALLY COMPILED FROM
THE STATEMENTS LAID BY
THE GOVERNMENT OF GREAT BRITAIN
BEFORE
THE KING OF THE NETHERLANDS,
AS ARBITER.

SAINT JOHN, NEW-BRUNSWICK :
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1838.

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FIFTH ARTICLE OF THE TREATY OF GHENT,

December 31th, 1814.

WHEREAS neither that point of the Highlands lying due north from the source of the River St. Croix, designated in the former Treaty of Peace between the Two Powers as *the north-west angle of Nova Scotia, nor the north-westernmost head of Connecticut River have yet been ascertained*; and whereas that part of the Boundary Line between the dominions of the Two Powers, which extends from the source of the River St. Croix, directly north to the above-mentioned north-west angle of Nova Scotia, thence along the said Highlands which divide those rivers, that empty themselves into the River of St. Lawrence, from those which fall into the Atlantic Ocean to the north-westernmost head of Connecticut River, thence down along the middle of that river to the 45th degree of north latitude, thence by a line due west on said latitude until it strikes the river Iroquois or Cataraguy, *has not yet been surveyed*; it is agreed that for these several purposes, two Commissioners shall be appointed, sworn and authorized, to act exactly in the manner directed with respect to those mentioned in the next preceding Article, unless otherwise specified in the present Article. The said Commissioners shall meet at St. Andrews, in the Province of New Brunswick, and shall have power to adjourn to such other place or places as they shall think fit. The said Commissioners shall have power to *ascertain and determine the points above-mentioned, in conformity with the Provisions of the said Treaty of Peace of 1783; and shall cause the Boundary aforesaid, from the source of the River St. Croix, to the River Iroquois or Cataraguy to be surveyed and marked according to the said provisions*: the said Commissioners shall make a map of the said Boundary, and annex to it a declaration under their hands and seals, certifying it to be the true map of the said Boundary, and particularizing the latitude and longitude of the north-west angle of Nova Scotia, of the north-westernmost head of Connecticut River, and of such other points of the said Boundary as they may deem proper. And both parties agree to consider such Map and Declaration as finally and conclusively fixing the said Boundary. And in the event of the said two Commissioners differing, or both, or either of them, refusing, declining, or wilfully omitting to act, such reports, declarations, or statements, shall be made by them, or either of them, and such reference to a friendly Sovereign or State shall be made in all respects, as in the latter part of the Fourth Article is contained, and in as full a manner as if the same was herein repeated.

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ERRATA.

Page 23, line 4, for *most*, read "must."

" 39, last line, for *courses*, read "sources."

" 59, line 29, for *their twofold*, read "that twofold."

North Eastern Boundary.

THE words of the Treaty of 1783, in its first and second Articles, are as follows :—

“ARTICLE I. His Britannic Majesty acknowledges the said United States, viz. New Hampshire, Massachusetts Bay, Rhode Island and Providence Plantations, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, and Georgia, to be Free, Sovereign, and Independent States; that He treats with them as such; and for Himself, His Heirs and Successors, relinquishes all Claims to the Government, Propriety and Territorial Rights of the same, and every part thereof.

“ARTICLE II. And that all disputes which might arise in future on the subject of the Boundaries of the said United States may be prevented, it is hereby agreed and declared that the following are and shall be their Boundaries; viz. : from the north-west angle of Nova Scotia, viz., that angle *which is formed by a line drawn due north from the source of Saint Croix River to the Highlands, along the said Highlands which divide those rivers that empty themselves into the River Saint Lawrence, from those which fall into the ATLANTIC OCEAN*, to the north-westernmost head of Connecticut River; thence down along the middle of that river to the forty-fifth degree of north latitude; from thence by a line due west or said latitude until it strikes the River Iroquois or Cataraguy; thence along the middle of said river into Lake Ontario; through the middle of said lake, until it strikes the communication by water between that lake and Lake Erie; thence along the middle of said communication into Lake Erie; through the middle of said lake, until it arrives at the water-communication between that lake and Lake Huron; thence along the middle of said water-communication into the Lake Huron; thence through the middle of said lake to the water-communication between that lake and Lake Superior; thence through Lake Superior, northward of the Isles Royal and Phelipeaux, to the Long Lake; thence through the middle of said Long Lake, and the water-communication between it and the Lake of the Woods, to the said Lake of the Woods; thence through the

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said lake to the most north-western point thereof, and from thence on a due west course to the River Mississippi; thence by a line to be drawn along the middle of the said River Mississippi, until it shall intersect the northernmost part of the thirty-first degree of north latitude:—South, by a line to be drawn due east from the determination of the line last mentioned, in the latitude of thirty-one degrees north of the equator, to the middle of the River Apalachicola or Catahouche; thence along the middle thereof to its junction with the Flint River; thence straight to the head of Saint Mary's River; and thence down along the middle of *St. Mary's River* to THE ATLANTIC OCEAN:—EAST, by a line to be drawn along the middle of the River St. Croix, *from its mouth in the Bay of Fundy* to its source; and from its source directly north to the aforesaid Highlands, which divide the rivers that fall into the ATLANTIC OCEAN from those which fall into the *River St. Lawrence*; comprehending all Islands within twenty leagues of any part of the shores of the United States, and lying between lines to be drawn due east from the points where the aforesaid Boundaries between *Nova Scotia* on the one part, and *East Florida* on the other, shall *respectively touch* THE BAY OF FUNDY and THE ATLANTIC OCEAN; excepting such Islands as now are, or heretofore have been, within the limits of the said Province of Nova Scotia."

Although the British and American Governments differ as to where the point of departure for the Northern Boundary of The United States, designated by the name of the north-west Angle of Nova Scotia, is to be placed according to the intention of the Treaty; and although the conflicting claims involve a difference of 105 miles distance on the due north Line, and of 10,705 square miles in total extent, both Parties agree in stating, that in order to determine the true situation of the above-mentioned point of departure, the *highlands intended by the Treaty must first be determined*. The correctness of this opinion admits of no doubt. The Treaty stipulates that the eastern Boundary line shall be drawn directly north *to the highlands*; and that the northern Boundary shall extend *along the highlands* from the point where the said north Line strikes them. Notwithstanding a certain awkwardness in the construction, it may, on the whole, be presumed that the Treaty contemplates the same highlands in the several clauses of the Article wherein that term is used. The real question, therefore, is this: *Along what highlands, touched by a line drawn due north from the source*

of the St. Croix, is the Northern Boundary of The United States to be carried, westward, to the north-westernmost head of the Connecticut River ?

However simple the form in which this question is stated, there would be no great candour in representing it as one of easy solution. The circumstances under which the treaty of 1783 was concluded, were such as to make it extremely probable that serious difficulties would arise in the course of its execution. The first object of the negotiation, *common to both parties*, was peace; the second was the establishment of peace on solid and durable foundations. It was essential to the latter purpose that the Boundaries of The United States should be explicitly and conclusively defined by mutual consent. By waiting for all the topographical information necessary to give a detailed description of the Boundaries, the negotiators would have exposed the whole work of pacification to the most imminent risk. This cannot fail of striking every one who bears in mind the immense extent of inland boundary claimed by The United States, as well on the side of the British Provinces as on that of the western wilderness. A considerable portion of the frontier territory was, at that time, altogether unknown, or, at best, very imperfectly explored. The framers of the Treaty were therefore reduced to the alternative either of confining themselves to a general definition of the Boundary according to such notions as they already possessed of the principal features of the country, or of abandoning every uncertain and disputed part of it to subsequent negotiation. That the former course of proceeding was ultimately preferred, notwithstanding the inconveniences attached to it, on distinct and deliberate consideration, is evident from the recorded fact of the British Plenipotentiary having rejected, after reference to his Government, the proposal of the American Negotiators to apply the principle of an indefinite postponement to a part of the frontier involving that which is immediately in question. The nearest practicable approach to settlement, preceded by a statement, as well in the Treaty itself as in its preamble, of the wise and conciliatory foresight which influenced the Contracting Parties, was naturally deemed more likely to promote a permanent good understanding between them, than a mere agreement, tacit or expressed, to complete the definition of the Boundaries at some later eventual period.

The Treaty of Ghent appears to have been concluded under a like anxiety to prevent or settle disputes arising out of the uncertain state of the Boundaries. How indeed could it

be otherwise with the experience which had been acquired after the Peace of 1783, and convincing evidence of which exists in the 4th and 5th Articles of the Commercial Treaty concluded in 1794? In the former of these Treaties it was presumed that the River Mississippi would be intersected by a due west line drawn from the north-westernmost point of the Lake of the Woods. The 4th Article of the latter is applied to the correction of that error. In the same manner it was found necessary to appoint a Commission for the purpose of determining which river was meant to be the St. Croix designated in the Treaty of 1783, as forming part of the Eastern Boundary of The United States. Other instances of the perplexity and ignorance which evidently prevailed to a very late period respecting many parts of the frontier territory, might be easily adduced. But let it suffice for the present to observe, that if little was ascertained concerning the sources and directions of Rivers, which generally afford the earliest means of communication, and the most convenient places for settlement in newly occupied countries, how very much less was probably known of a hilly or mountainous tract, situated at a distance from the sea, overgrown with forests, and intermingled with extensive morasses. The 5th Article of the Treaty of Ghent, after all the discussions between the negotiators of it which have of late been so industriously quoted in the American Congress, expressly declares that "neither that point of the Highlands lying due north from the source of the River St. Croix designated in the former Treaty of Peace between the two Powers as the *north-west angle of Nova Scotia*, nor the north-westernmost head of the Connecticut River, *have yet been ascertained.*" The article goes on to provide for the appointment of Commissioners who are empowered among other things "to ascertain and determine the points above mentioned in conformity with the provisions of the said Treaty of Peace of 1783."

A moment's reflection on what precedes cannot fail of shewing how extremely difficult, or rather how utterly impracticable it must have been for the Negotiators of 1783 to describe the Boundary throughout its whole extent in such terms as to leave no room for hesitation or dispute in fixing its actual delimitation. It would surely be more reasonable to wonder at the degree of success which has attended the labours of the Commissioners employed in that operation, than to be unprepared for some occasional inconsistency be-

tween the expressions of the Treaty and the localities of the country when ascertained by regular surveys.

In no inquiry of this description can the ends of justice be attained, except by looking steadily to the intentions of the Treaty, or, in other words, of those who framed it. Few Treaties would afford occasions for dispute, if the terms, in which they are expressed, could always be applied with clearness and certainty to the cases for which they were meant to provide. It is precisely the obscurity, or contradiction of the terms, or a want of evident conformity between them and the thing to be done, which is the frequent cause of difficulty in carrying Treaties into execution. This defect attaches more or less to all human agreements. In those which subsist between Governments and Nations, separated from each other by distance, and still more so by the difference of their views, circumstances and interests, there must necessarily be greater room for its operation. From what special causes the Treaty of 1783 was peculiarly liable to this evil, in so far as respects the Boundaries of The United States, it would be superfluous to repeat. The cogent evidence, however, which comes in aid of the letter of the Treaty to indicate the real intention of the Parties, would leave as little reason to regret any want of preciseness that might be found in its terms, as any such inaccuracy would itself be calculated to create surprise under the known circumstances of the case.

But if it can be shewn that the terms of the Treaty, rightly understood, are *not* in contradiction, either with the principal features of the country, as now ascertained, or with the presumed intentions of the Parties, and, on the contrary, that they correspond, to all declared intents and purposes, with the Boundary Line indicated by the present British claim, such a concurrence, which could hardly have been reckoned upon with entire confidence when the Treaty was signed, must surely be entitled to its full weight. The conclusion to which it leads would be the more inevitable, when taken in connection with the circumstance that the wording of the Treaty, in one decisive particular,* was clearly and cautiously selected, with a view to that very limitation for which Great Britain contends in support of her claim. Evidence of this description leaves little or nothing to be desired. But, after all, the main object is to ascertain the real intention of the Parties to the Treaty, and provided

* This refers to the term "Atlantic Ocean," used in the second Article of the Treaty of 1783, and further explained in the course of the ensuing remarks.

that object be attained according to the best available means of information, it is of small comparative importance whether the *spirit* or the *letter* of the Treaty be found most conducive to its accomplishment. One thing is *certain*: the *letter* is only of value in proportion as it tends to the discovery or maintenance of the *truth*. Now, truth is by no means of a narrow or partial character. It cannot, indeed, be entirely severed from the letter, but it is diffused through the context, and lives in the spirit of a Treaty. Vattel expresses himself as follows, in the 17th chapter of his second Book: "If it happens that the Contracting Parties have not "made known their will with sufficient clearness, and with "all the necessary precision, it is certainly more conformable "to equity, to seek for that will in the sense most favourable to equality and the common advantage, than to suppose it in the contrary sense." Thus it is, that the authority of the most approved writers on the Law of Nations is found in strict accord with the maxims of common sense and good faith.

The United States have, indeed, spared no effort to make out that the terms of the Treaty, taken in their obvious and literal sense, establish incontestably the line of Boundary claimed by them to the exclusion of every other. The truth of this assertion is positively denied on the part of Great Britain. The words of the Treaty Article, taken by themselves, lead to no such conclusion; taken with reference to the Treaty at large, they lead to a very different conclusion; and taken with reference not only to the Treaty, but also to the intentions of those who framed it, as further manifested by various corroborating circumstances, they establish clearly and satisfactorily the justice of the British claim.

Looking, first, to the Treaty itself, nothing can be clearer than the great governing principle upon which its provisions were founded. This principle is distinctly laid down in the preamble of the Definitive Treaty concluded in 1783, and also in that of the Preliminary Articles signed in the preceding year. "*It is agreed*," says the latter, "*to form the Articles of the proposed Treaty on such principles of liberal equity and reciprocity, as that partial advantages (those seeds of discord) being excluded, such a beneficial and satisfactory intercourse between the two Countries may be established, as to promise and secure to both perpetual peace and harmony.*" In the Definitive Treaty it is declared to be the intention of the Parties to establish

their relations with each other "*upon the ground of reciprocal advantages and mutual convenience,*" in such manner as to promote and secure the same great object of perpetual harmony between both. In addition to these general but forcible expressions, the Article immediately relating to Boundaries is prefaced by a specific statement of the motive which induced the Parties to declare them by mutual agreement, namely, "*that all disputes which might arise in future on the subject of the Boundaries of the said United States may be prevented.*" No words could express more distinctly than these passages the desire of both Parties, not only to preclude the possibility of future dispute by defining the Boundaries as positively as it was then practicable to define them, but also to settle them in such a manner as would best consult the convenience of each Party, and thereby conciliate the acknowledged rights and true interests of both.

It further results from an examination of the Treaty, that although the agreement to define the Boundaries originated in the above-mentioned motives, the act of definition itself was peremptory, and purposely rendered independent of every principle or motive, but the declared consent of the Parties. The first Article contains a recognition of the Independence of the Thirteen United States and of their territory. The second Article declares, by mutual agreement, what the extent of territory so recognized was meant to be. The recognition and the declaration are two separate things. The Treaty being silent, it cannot be presumed that they were intended to be strictly co-extensive, in the teeth of that uncertainty which was known to hang over the conflicting claims of the two Countries with respect to a considerable portion of the common frontier.

This peremptory definition of the Boundaries, it is also to be remembered, was applied exclusively to The United States. There is no question of the Boundary of the British Colonies, except as a consequence of the settlement of The United States' Boundary. Wherever the States border on those Colonies, the same Boundary Line which limits the one must necessarily limit the other also. The two Countries did not stand in corresponding situations towards each other when the Treaty of 1783 was negotiated. Whatever advantage might accrue to the United States from having their sovereignty recognized by Great Britain, the validity of the British title to the remaining British Possessions could derive no additional strength from being acknowledged by them.

On the whole, then, it may be affirmed with confidence, that the intention of the Treaty was,

1° To define exclusively the limits of the United States ;

2° To define them peremptorily ;

3° To define them with the view of preventing future disputes ; and,

4° To define them in such a manner as to promote the "reciprocal advantage and mutual convenience" of both Countries.

The next field of inquiry is the negotiation which preceded the conclusion of the Treaty. But in making any inquiry into the imperfect records of that event, care must be taken to guard equally against partiality, and needless discussion. The last of these dangers may be avoided by appealing only to such documents, relative to the Treaty, as proceeded either from the negotiators themselves, or from the authorities, under whose instructions they acted. The former is little to be apprehended on the side of Great Britain, if the documents referred to, instead of being British, or even common to both parties, are entirely and exclusively *American*. Sufficient materials, even on this limited plan, are in existence.

In "The Secret Journals of the Acts and Proceedings of Congress," published in the United States in 1821, under the authority of Congress, a full account is given of the proceedings of the American Congress relative to the negotiations which preceded and introduced the preliminary articles of 1782, subsequently embodied in the definitive Treaty of 1783.

Among these documents are the original instructions given by Congress to their Commissioner appointed to conduct the negotiations, which instructions include the first draft of the article respecting Boundaries, as adopted in Congress after long and anxious deliberation.

The following are extracts from those instructions, vol. ii. p. 224 :

"August 14, 1779.—Congress proceeded in the consideration of the instructions to the Minister to be appointed for negotiating a Peace, and unanimously agreed to the following draft of instructions to the Commissioner to be appointed to negotiate a Treaty of Peace with Great Britain.

"SIR,—You will herewith receive a commission, giving you full power to negotiate a Treaty of Peace with Great

“ Britain, in doing which you will conform to the following information and instructions :

“ 1. The United States are sincerely desirous of peace, and wish by every means, consistent with their dignity and safety, to spare the further effusion of blood. They have, therefore, by your commission and these instructions, laboured to remove the obstacles to that event, before the enemy have evidenced their disposition for it. But as the great object of the present defensive war on the part of the Allies is to establish the Independence of the United States, and as any Treaty whereby this end cannot be obtained must be only ostensible and illusory, you are, therefore, to make it a preliminary article to any negotiation, that Great Britain shall agree to treat with the United States as sovereign, free, and independent.

“ 2. You shall take especial care also, that the independence of the said States be effectually assured and confirmed by the Treaty or Treaties of Peace, according to the form and effect of the Treaty of Alliance with His Most Christian Majesty. And you shall not agree to such Treaty or Treaties, unless the same be thereby so assured and confirmed.

“ 3. The Boundaries of these States are as follows, viz. : these States are bounded North, by a line to be drawn *from the north-west angle of Nova Scotia* along the highlands which divide those rivers which empty themselves into the River St. Lawrence, from those which fall *into the Atlantic Ocean*, to the north-westernmost head of Connecticut River ; thence down along the middle of that river to the forty-fifth degree of north latitude ; thence due west in the latitude forty-five degrees north from the equator to the north-westernmost side of the River St. Lawrence or Cadaraqui ; thence straight to the south end of Nepissing ; and thence straight to the source of the River Mississippi : West, by a line to be drawn along the middle of the River Mississippi from its source to where the said line shall intersect the thirty-first degree of north latitude : South, by a line to be drawn due east from the termination of the line last mentioned in the latitude of thirty-one degrees north from the equator to the middle of the River Apalachicola, or Catahouche ; thence along the middle thereof to its junction with the Flint River ; thence straight to the head of St. Mary's River ; and thence down along the middle of St. Mary's River *to the Atlantic Ocean* ; and East, *by a line to be drawn along the middle of St. John's*

" *River from its source to its mouth in the Bay of Fundy,*
 " comprehending all Islands within twenty leagues of any
 " part of the shores of the United States, and lying between
 " lines to be drawn due east from the points where the afore-
 " said Boundaries between Nova Scotia on the one part, and
 " East Florida on the other part, shall *respectively touch the*
 " *Bay of Fundy and Atlantic Ocean.* You are, therefore,
 " strongly to contend that the whole of the said countries
 " and islands lying within the Boundaries aforesaid, and
 " every citadel, fort, post, place, harbour and road to them
 " belonging, be absolutely evacuated by the land and sea
 " forces of His Britannic Majesty, and yielded to the Powers
 " of the States to which they respectively belong, in such
 " situation as they may be at the termination of the war.
 " But, notwithstanding the clear right of these States, and
 " the importance of the object, yet they are so much in-
 " fluenced by the dictates of religion and humanity, and so
 " desirous of complying with the earnest request of their Al-
 " lies, that if the line to be drawn from the mouth of the
 " Lake Nepissing to the head of the Mississippi cannot be ob-
 " tained without continuing the war for that purpose, you
 " are hereby empowered to agree to some other line between
 " that point and the River Mississippi; provided the same
 " shall in no part thereof be to the southward of latitude
 " forty-five degrees north. And in like manner, *if the East-*
 " *ern Boundary above described cannot be obtained, you are*
 " *hereby empowered to agree that the same shall be after-*
 " *wards adjusted, by Commissioners to be duly appointed*
 " *for that purpose, according to such line as shall be by them*
 " *settled and agreed on, as the Boundary between that part*
 " *of the State of Massachusetts Bay, formerly called the*
 " *Province of Maine, and the Colony of Nova Scotia, agree-*
 " *ably to their respective rights.* And you may also consent,
 " that the enemy shall destroy such fortifications as they
 " may have erected."

Subsequently, in the year 1782, after the negotiations had
 been actually opened, the American Congress took these
 matters into consideration, and concurred in a report made
 to them by a Committee of their House, appointed to inves-
 tigate the subject of Boundaries with reference to the above-
 cited instructions.

Of that report, which may be seen at length in the above-
 mentioned "Secret Journals of the Old Congress," Vol. iii.
 p. 169, the following are extracts.

The Committee reported "that they had collected facts
 "and observations, which they recommend to be referred
 "to the Secretary for Foreign Affairs, to be by him digested,
 "completed and transmitted to the Ministers Plenipotentiary
 "for negotiating a Peace, for their information and use. * *

"With respect to the Boundaries of the States, * * *
 "*Massachusetts claims under the charter granted by Wil-*
liam and Mary on the 17th October, 1691.
 * * * * *

"It is incumbent on us to show that the territorial rights
 "of the thirteen United States, while in the character of
 "British Colonies, were the same with those defined in the
 "instructions given to Mr. J. Adams on the — day of Au-
 "gust, 1779, * * * * *

"So fair are our pretensions rendered by the united opera-
 "tion of the grants, charters, Royal commissions, and
 "Indian cessions, * * * that we
 "shall content ourselves with reviewing the objections which
 "will most probably be urged against them, without enter-
 "ing into the direct proofs of our titles.

"*First objection.* Even upon the supposition that the
 "charter of Massachusetts is valid so as to cover the vacant
 "lands, still it does not follow that St. John's River is part
 "of its Eastern Boundary; for that river is contended to be
 "in Nova Scotia under the expression of the New Charter
 "of Massachusetts in 1691, which conveys the country
 "between the Province of Maine and Nova Scotia. The
 "south-west boundary of Nova Scotia, therefore, will regu-
 "late this claim. But it is well known that in the alterca-
 "tion between France and Great Britain upon this very
 "subject in 1751, Acadia or Nova Scotia was asserted by
 "the latter to be bounded by Pentagoet or Penobscot River.

"*Answer.* "It is to be observed, that when the boun-
 "daries of the United States were declared to be an ultima-
 "tum, it was not thought advisable to continue the war
 "merely to obtain territory as far as *St John's River*; but
 "that the dividing line of *Massachusetts and Nova Scotia*
 "was to be consigned to future settlement. It must be con-
 "fessed, also, that this country, which is said in the New
 "Charter to border on Nova Scotia and the Province of
 "Maine, on opposite sides, and which goes under the name
 "of *Sagahock*, cannot be proved to extend to the *River St.*
John as clearly as that of *St. Croix*. But there is some
 "reason notwithstanding to believe, that Nova Scotia was
 "never supposed by the British King in any grant to his

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 Vol. iii.

"*subjects to come to the south of St. John's River*, although
 "he might have exacted from France a relinquishment of
 "the lands to the River Penobscot, or even Kennebec, as a
 "part of Nova Scotia."

The Committee, after further reasoning upon the *supposed* Boundaries laid down in various old charters affecting that country, conclude this part of their report by saying :

"We are obliged to urge probabilities, *because in the early possession of a rough unreclaimed country, accuracy of lines cannot be much attended to.* But we wish that the north eastern Boundary of Massachusetts may be left to future discussion, when other evidences may be obtained, which the war has removed from us."

In a work entitled the "*Private Correspondence of Dr. Franklin*," we find the following authentic account of what occurred during this important period of the negotiations in 1782.

1. Extract of a letter from Dr. Franklin to the Honble. Robert Livingston, dated Passy, 14th October, 1782.

"We have now made several preliminary propositions, which the English Minister, Mr. Oswald, has approved and sent to his Court. . He thinks they will be approved there, *but I have some doubts.* In a few days, however, the answer expected will determine. By the first of these articles the King of Great Britain renounces for himself and successors all claim and pretension to dominion or territory within the thirteen United States ; *and the Boundaries are described as in our instructions, except that the line between Nova Scotia and New England is to be settled by Commissioners after the Peace.*"

2. Extract of a letter from Dr. Franklin to the Hon. R. Livingston, dated Passy, December 5, 1782.

"You desire to be very particularly acquainted with every step which tends to a negotiation. I am therefore encouraged to send you the first part of the journal, which accidents and a long severe illness interrupted, but which from notes I have by me may be continued, if I thought proper. In its present state it is hardly fit for the inspection of Congress, certainly not for public view ; I confide it therefore to your prudence.

"The arrival of Mr. Jay, Mr. Adams, and Mr. Laurens, relieved me from much anxiety, which must have continued, if I had been left to finish the Treaty alone ; and it has given me the more satisfaction, as I am sure the business has profited by their assistance.

"Much of the summer had been taken up in objecting against the Powers given by Great Britain; and in removing those objections, the using any expressions that might imply an acknowledgement of our independence, seemed at first industriously to be avowed. (*Q. avoided?*) But our refusing otherwise to treat, at length induced them to get over that difficulty; and then we came to the point of making propositions. Those made by Mr. Jay and me, before the arrival of the other gentlemen, you will find in the enclosed paper, No. 1, which was sent by the British Plenipotentiaries to London for the King's consideration. After some weeks an Under Secretary, Mr. Strachey, arrived, with whom we had much contestation about the Boundaries, and other articles which he proposed; we settled some, which he carried to London, and returned with the propositions, some adopted, others omitted or altered, and new ones added, which you will see, Paper No. 2.* *We spent many days in disputing*, and at length agreed on and signed the preliminaries, which you will receive by this conveyance."

Paper No. 1, above referred to.

"Articles agreed upon by and between Richard Oswald, Esq., the Commissioner of His Britannic Majesty for treating of Peace with the Commissioners of the United States of America, on behalf of His said Majesty, on the one part, and Benjamin Franklin, and John Jay, two of the Commissioners of the said States for treating of Peace with the Commissioners of His said Majesty, on their behalf, on the other part.

"Whereas reciprocal advantages and mutual convenience are found by experience to form the only permanent foundation of peace and friendship between States, it is agreed to frame the articles of the proposed Treaty on such principles of liberal equity and reciprocity, *as that partial advantages (those seeds of discord) being excluded*, such a beneficial and satisfactory intercourse between the two countries may be established, as to *promise and secure to both the blessings of perpetual peace and harmony.*

1st. "His Britannic Majesty acknowledges the said United States, viz., New Hampshire, Massachusetts Bay, Rhode Island and Providence Plantations, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, and Georgia, to be

* This Paper No. 2 is not contained in the work from which these extracts are taken.

" free, sovereign, and independent States ; that he treats with
 " them as such ; and for Himself, his Heirs and Successors,
 " relinquishes all claims to the government, propriety and
 " territorial rights of the same, and every part thereof ; and
 " that all disputes which might arise in future on the subject
 " of the Boundaries of the said United States, may be pre-
 " vented, it is hereby agreed and declared that the follow-
 " ing are, and shall remain to be, their Boundaries, viz :

" The said States are bounded *North by a line to be drawn*
 " *from the North-west angle of Nova Scotia along the high-*
 " *lands which divide those rivers that empty themselves into*
 " *the River St. Lawrence from those which fall into the*
 " *Atlantic, to the North-westernmost head of Connecticut*
 " *River ; thence down along the middle of that river to the*
 " *45th degree of north latitude, and thence due west in the*
 " *latitude forty-five degrees north from the Equator, to the*
 " *north-westernmost side of the River St. Lawrence, or Ca-*
 " *taraguy ; thence straight to the Lake Nepissing, and thence*
 " *straight to the source of the River Mississippi : west, by a*
 " *line to be drawn along the middle of the River Mississippi,*
 " *to where the said line shall intersect the 31st degree of*
 " *north latitude ; south, by a line to be drawn due east from*
 " *the termination of the line last mentioned, in the latitude*
 " *of 31 degrees north of the Equator to the middle of the Ri-*
 " *ver Apalachicola, or Catahouchi ; thence along the middle*
 " *thereof to its junction with the Flint River ; thence straight*
 " *to the head of St. Mary's River ; thence down along the*
 " *middle of St. Mary's River to the Atlantic Ocean : and*
 " *east, by a line to be drawn along the middle of the St.*
 " *John's River from its source to its mouth in the Bay of*
 " *Fundy ; comprehending all islands within twenty leagues*
 " *of any part of the shores of the United States, and lying*
 " *between lines to be drawn due east from the points where*
 " *the aforesaid Boundaries, between Nova Scotia on the one*
 " *part, and East Florida on the other, shall respectively touch*
 " *the Bay of Fundy AND the Atlantic Ocean."*

" PARIS, 8th October, 1782.

" A true copy of which has been agreed on between the
 " American Commissioners and me, to be submitted to His
 " Majesty's consideration. (Signed) " R. OSWALD."

" Alteration to be made in the Treaty, respecting the Boun-
 " daries of Nova Scotia, viz :

" *East, the true line between which and the United States*
 " *shall be settled by Commissioners, as soon as conveniently*
 " *may be after the war."*

3. Extract of a letter from Dr. Franklin to the Hon. R. Livingston, Secretary for Foreign Affairs, dated Passy, 14th December, 1782 :

"SIR,—We have the honour to congratulate Congress on the signature of the Preliminaries of a Peace between the Court of Great Britain and the United States of America, to be inserted in a Definitive Treaty so soon as the terms between the Crowns of France and Great Britain shall be agreed on. A copy of the articles is here enclosed."—(N. B. The second article is there described such as it now stands in the Treaty of 1783.)

"Remarks on Article II. relative to the Boundaries :

"The Court of Great Britain insisted on retaining all the territories comprehended within the Province of Quebec, by the Act of Parliament respecting it. They contended that *Nova Scotia should extend to the River Kennebec.*"

The evidence of Mr. Adams and Mr. Jay (co-plenipotentiaries with Dr. Franklin in negotiating the Treaty of 1782-3) relative to the same matters, subsequently taken on oath before the Commissioners appointed under the Treaty of 1794, for ascertaining the true St. Croix, corroborates in every point the information given by Dr. Franklin.

"The British Commissioners," says Mr. Adams, "first claimed to Piscataqua River, then to Kennebec, then to Penobscot, and at length to St. Croix, as marked on Mitchell's map."

That map, Mr. Adams had declared, was the only map or plan which was used by the Commissioners at their public conferences.

Mr. Adams proceeds to say, "one of the American Commissioners at first proposed the River St. John as marked on Mitchell's map; but his colleagues observing, that as the St. Croix was the River mentioned in the charter of Massachusetts Bay, they could not justify insisting on the St. John as an ultimatum, he agreed with them to adhere to the charter of Massachusetts Bay."

"The ultimate agreement," repeats Mr. Adams, in reply to another interrogatory, "was to adhere to the Charter of Massachusetts Bay, and to the St. Croix River mentioned in it, which was supposed to be delineated in Mitchell's map."

Mr. Jay declared on oath, in the same manner, that "in the course of the negotiations, difficulties arose respecting the eastern extent of the United States. That Mitchell's map was before them, and was frequently consulted for geographical information."

Further, Mr. Jay declared, "*that he doubted there having then been very clear conceptions relative to the just and precise eastern extent of Massachusetts*, for he had reason to believe, that respectable opinions in America at that time (1782) considered the River St. John as the proper eastern limit of the United States."

The foregoing documents will now form the subject of some remarks in the order in which they have been quoted.

The instructions framed in 1779 by the Congress of The United States, preparatory to a negotiation for peace, contain the same Article respecting Boundaries which, with some important modifications, was afterwards transferred to the Treaty. The changes introduced into the Article relate to two portions of the Boundary: 1°. That part of the Northern Boundary which extends from where the parallel of 45° North Latitude intersects the River St. Lawrence to the Mississippi: 2°. The Eastern and adjoining part of the Northern Boundary of the United States.*

The first of these amendments had the effect of substituting for the Line proposed by The United States from Lake Nepissing to the Mississippi another line passing very considerably to the South, through the great chain of North American Lakes. In virtue of the second, the River St. Croix is made to constitute the Eastern boundary of the United States, instead of the River St. John, which had been proposed by the American Congress; and certain highlands are substituted for that part of the River St. John, which would have formed a boundary on the north; a definition of what was to be understood by "the North West Angle of Nova Scotia," having been at the same time inserted in the same Article of the Treaty. It is further to be observed, that such latitude as had been given by the instruction itself to the American Commissioners was subjected to certain specific restrictions, and that in both the cases above-mentioned, these restrictions, as well as the original proposals, were set aside in the course of the negotiation. With respect to the latter, the American Negotiators, in case of not being able to obtain the River St. John for an Eastern boundary, were "*empowered to agree that the same should be afterwards adjusted by Commis-*

* Although, in the instruction addressed by the American Congress to their Commissioners, the proposal of the River St. John is expressed only with reference to the east boundary, it is, nevertheless, manifest that, owing to the bend of that river to the westward, it would, in point of fact, constitute a considerable part of the northern boundary also.

"*oners to be duly appointed for that purpose.*" It is needless to repeat the words of the Treaty already cited to prove that neither of these two proposals, the original or the substituted, was accepted; but on the contrary, that a more westerly river than the St. John, and one which had consequently the effect of contracting the territory to be defined on that side, was ultimately agreed upon, and so consigned to the Treaty.

The mere exposition of these facts is sufficient to establish that whatever may have been the principle upon which the United States thought fit to ground their pretensions, the proposals emanating from it were evidently not satisfactory to the British Government, and that the principle itself was so little capable of bearing them out, that it became indispensable to admit a new arrangement of the Boundaries, which could not possibly repose on the same principle.

It is observable, indeed, that the American Instructions declare no *principle* of Settlement with respect to the Boundaries. To say that "*the Boundaries of these States are as follows,*" is the assertion of a fact, not the declaration of a principle. Supposing the proposition contained in these words of the instruction to be true, it may have been true on the principle of possession, or on that of right derived from any one of several distinct sources, or from all. It may have been a right of The United States, taken severally, or of the same States constituting one political Body. The only part of the instruction relating to Boundaries, which even hints at a principle, is that incidental clause wherein a substitution for the proposed eastern boundary is placed eventually at the discretion of the American Minister. Speaking of the appointment of Commissioners as conditionally suggested, the clause in question runs thus: "*According to such Line as shall be by them settled and agreed on as the Boundary between that part of the State of Massachusetts Bay, formerly called the Province of Maine, and the Colony of Nova Scotia, agreeably to their respective rights.*" But this proposal having been rejected by the British Government, and a new arrangement substituted authoritatively in the Treaty for the original proposal which preceded it, there is no ground whatever for concluding that the Treaty stipulation, as it now stands, was, in any degree, connected with that principle. The presumption is, indeed, entirely the other way. In giving a discretionary power to their Minister on the two points before mentioned, The

United States express themselves as follows: "*Notwithstanding the clear right of these States,*" (viz. to the set of boundaries first proposed) "*and the importance of the object, yet they are so much influenced by the dictates of RELIGION AND HUMANITY, &c. that you are hereby empowered to agree to some other Line, &c.*" That is to say, the "clear right" of The United States was eventually to be given up from general motives of "humanity" to the objections, *as such*, of their adversary; not, observe, to any convincing proofs which that adversary might furnish of his superior title to parts of the frontier territory, but to his determination rather to carry on the war, than to sign a peace in strict conformity with the pretensions of The United States. Such forbearance is worthy of the highest praise on grounds of "religion and humanity;" but it is any thing rather than evidence that the Boundaries, as ultimately agreed upon, were regulated by a fixed acknowledged principle of right.

An attentive perusal of the foregoing extracts from the Report of the Committee of the American Congress can hardly fail to suggest the following conclusions:—1°. That although The United States may not have thought it prudent to ground their territorial claims upon any distinct principle in the instruction prepared for their Plenipotentiary, they well knew that their only plausible title was that derived under their charters as British Colonies, modified by subsequent Acts of the Government. 2°. That, although they deemed the justice of their claims too manifest to require the exhibition of any direct proofs, they, nevertheless, anticipated opposition from Great Britain to their proposal respecting the north-eastern Boundary, and perhaps even the assertion of a counter claim, as far west as the River Penobscot or the Kennebec. 3°. That with reference to this north-eastern Boundary, they felt the necessity of *urging probabilities*, "*because in the early possession of a rough unreclaimed country, accuracy of Lines cannot be much attended to.*" 4°. That is was their "*wish*" to have the "*north-eastern Boundary of Massachusetts left to future discussion.*"

There is no necessity for going into any length of reasoning on these conclusions. It is sufficient to consign them here for eventual reference in future stages of these remarks. To one point, however, it may be well to direct immediate attention, namely, the "*wish*" expressed by the American Congress that the *north-eastern Boundary of Massachusetts*

should be reserved for future discussion. Some of the circumstances under which that wish was entertained may be easily collected from the documents already referred to.

It appears, in the first place, that 'The United States were then actually in possession of "Grants, Charters, Royal Commissions and Indian Cessions," sufficient in their opinion to prove the "clearness" of their "right." It also appears that the channel of the River St. John, such as it was afterwards proposed in negotiation as their north-eastern Boundary, was comprehended in that right; that the independent sovereignty of The United States, so closely connected with their territorial right, remained to be established; and that its establishment in virtue of the formal recognition of Great Britain was the main object, to which they were looking with eagerness as the crown and consummation of their struggle.

The approximation of these circumstances is by no means unimportant. It was natural to inquire why there should have been any *wish* on the part of The United States, to leave their north-eastern Boundary unsettled in the Treaty of Peace, which was to settle all other parts of the Boundary, when they were already possessed of such convincing proofs of the "clearness" of their "right?" The answer is now obvious. The American Congress, besides wishing earnestly for Peace, did not overlook the advantage with which they might hope to maintain their pretension in its utmost extent after the recognition of their independence should have been placed by an act of solemn ratification beyond the reach of Great Britain. It might be difficult to prove that the same reason was among the motives which induced the British Government to insist upon defining the whole Boundary Line in one and the same Treaty; but it is at least evident, *in point of fact*, that Great Britain could not have acted more strictly in accordance with that supposition than she *did*; and that the agreement ultimately consigned to the Treaty, bore every appearance of proving an effectual safeguard against future dispute or encroachment.

The correspondence of the American Plenipotentiaries, and the evidence which they subsequently gave on oath before the Commissioners appointed under the Treaty of 1794 to ascertain the true river St. Croix, also present and confirm facts which it is material to bear in mind. The letters and evidence in question furnish the *data* which follow.

1°. The proposals made to the British Plenipotentiary, in the Negotiations of 1783, were in substance precisely the

same as those which appear in the instructions drawn up by the American Congress in 1779, and to which the approved Report of their Committee, in 1782, refers.

2°. These proposals, on their being sent to London by Mr. Oswald, were rejected by the British Government.

3°. The American Negotiators, after some difference of opinion *agreed amongst themselves* to regulate their demand by the Charter of Massachusetts Bay.

4°. Between the rejection of the first American proposals, and the adoption of the Article, which now stands in the Treaty, much strenuous contestation took place respecting the Boundaries, the British Negotiators demanding successively to the Kennebec, to the Penobscot, and to the St. Croix.

5°. No mention is made of any principle *agreed upon by both Parties* as the basis on which the conflicting territorial claims were to be adjusted.

Enough has been stated to establish that what was laid down in the outset of this inquiry as the general intention of the Treaty of 1783, resulting from an examination of the preliminary expressions employed therein, is fully borne out by such additional information of an authentic kind, as can now be obtained respecting the negotiations, either during their progress or immediately prior to their commencement. The instructions and correspondence of the American Negotiators coincide with the Treaty itself, in showing that notwithstanding the conviction professed by The United States of the "clearness" of their "right," a great degree of uncertainty prevailed on both sides respecting the claims of either Party to the Territory in dispute, and that it was ultimately found best to cut the knot by a peremptory decision, resting on no principle but that of mutual consent and the obvious utility of removing any immediate cause of disagreement and collision from the intercourse of the two Countries.

Having thus endeavoured to form, on grounds already explained, a distinct and correct conception of what the framers of the Treaty had generally in view when they defined the Boundaries, in the absence of any settled line then existing between Massachusetts and the adjoining British Provinces, it may considerably advance the argument to know what notions were at that time entertained of the country, to which both parties asserted a claim. No very detailed or perfect information can be expected to result from such an inquiry. The opinion of the American Congress has just

been cited to the effect that "probabilities" only can be "urged" with respect to a "rough, unreclaimed country." Some knowledge, however, though in many respects limited and inaccurate, most surely have existed of a region not wholly destitute of settlers, which had been traversed not long before by a body of Troops, and previously investigated by an Officer in the public employment, and of which several maps exhibiting the supposed courses of the principal rivers and the general outline of the coast and bays had been published. That knowledge, whatever may have been its degree, must surely have reached the Negotiators of the Treaty; and there can be little doubt that in describing the Boundaries of The United States, they were more or less guided by its influence.

The following are Extracts from Governor Pownall's "Topographical Description of the Middle British American Colonies," published in the year 1776:—

"All the Rivers which have their sources amidst the northern ridges of this great range fall into Canada or St. Lawrence River, as the St. Francis, Chaudiere, and many others; all which have their sources amidst the southern ridges, fall into the Bay of Funde or into the main ocean.

"Connecticut River rises in north lat. $45^{\circ} 10'$ at the Height of Land in long. 4° east of the meridian of Philadelphia.

"A range running hence across the east Boundary line in New Hampshire, in lat. 44° , and trending north east, forms the Height of Land between Kennebaig and Chaudiere Rivers; of the nature and course of this highland I am totally uninformed. * * *

"As the River Kennebaig has been now rendered famous as a pass by a march of some spirit and enterprise, made by the Americans following its course across the land to St. Lawrence, or Canada River, I shall here give a more particular and detailed description of it than I should otherwise have entered into.

"This river in the year 1754 and 1755 was talked of as a route by which an army might pass the best and shortest way to attack Canada and Quebec. * * *

"When I was Governor of the Province of Massachusetts Bay, I had this route particularly investigated by Ensign Howard, a country surveyor, under the direction of Captain Nichols, who commanded at Fort Frederick. Instead of a short pass of some eight or ten miles of easy portage, this Indian path turned out to be a route on a line as a bird flies, of nearly fifty miles over land, impracticable to an army that hath a train of artillery and heavy baggage. It appeared, however, (that although a difficult and very laborious route) it was practicable to any body of men, who should go light armed as a scouting party, either to reconnoitre or to break up settlements. The sort of march which Arnold and his people experienced has confirmed this account, given 17 or 18 years ago. After taking possession of the Penobskiaig country, I had all the eastern branches of this river traced to their sources, and the communications between them and the waters of the Penobskiaig scrutinized by constant scouting parties.

"The River Kennebaig, to begin from its principal branch, may be described as rising on the Height of Land, in north lat. $45^{\circ} 20'$, and in east long. from Philadelphia $5^{\circ} 10'$ or thereabouts.

"The ranges in York and Cumberland counties trend to the northward of north-east; those in the county of Lincoln, east of Kennebaig, next the coast, do so likewise; but within land they trend more and more to the east of north-east. All the heads of Kennebaig, Penobsciaig and Passamaquada Rivers are in the *Height of Land*, running east-north-east."—[pp. 15, 17, 22, 24.]

These extracts throw a strong light on this part of the inquiry, and serve to bring into one point of view what was known, and what was not known, respecting the high ranges of land from which the principal rivers to the east of Lake Champlain (falling, according to Mr. Pownall's threefold division, *either into the St. Lawrence, or into the Ocean, or into the Bay of Fundy*) derive their head waters.

First, there is a range running in a north-easterly direction from the source of the Connecticut River, forming "the height of land between Kennebaig and Chaudiere Rivers."

Secondly, there is the range, also termed "*Height of Land*," in which are situated "all the heads of Kennebaig, Penobsciaig, and Passamaquada Rivers." This *Height of Land* runs "east-north-east," and is rather a prolongation of the former range than a separate one.

Thirdly, the tract of Country lying between this "*Height of Land*" and the St. Lawrence, is described as fifty miles in breadth, offering "a difficult and very laborious route," and one only practicable for Troops, when unaccompanied with artillery and heavy baggage.

It must be added, that with the exception of the head waters of the River Connecticut, which had been recently ascertained by an actual survey, the latitudes of the rivers at their respective sources appear to have been laid down with no great precision. Mr. Pownall says, however, that on taking possession of the Penobsciaig Country, he had "all the eastern branches of this river traced to their sources, and the communications between them and the waters of Penobsciaig scrutinized by constant scouting parties."

Speaking of the whole range of highlands at the head of the Atlantic Rivers nearest to the Connecticut, the author observes as follows: "Between this high mountainous tract and the Ocean, both in its northern and its eastern range, there is a Piedmont of irregularly broken hilly land. Of that, in the eastern parts of New England, especially east of Penobsciaig, I can say nothing with accuracy, and will therefore say nothing at all." p. 17.

This, it must be allowed, is the language of an author scrupulously attached to truth; and, on the whole, it may

be inferred with safety from his work, that all the Rivers flowing into the Atlantic between the Connecticut and the St. Croix were either known or supposed to have their head waters in a range of highlands, or mountainous tract, stretching eastward with a strong northerly inclination; and that less was known of the range in proportion as it extended towards Nova Scotia.

It is hardly conceivable that such a work as Mr. Pownall's should have been unknown to the persons who negotiated the Treaties of 1782-3, nor is it at all likely that much had been added to the topographical accounts of New England and the adjoining districts, between the period of its publication in 1776, and the conclusion of the Preliminary Articles of Peace.

At an earlier period than either of those the Royal Proclamation of 1763, described the Boundaries of the Province of Quebec in the following terms.

"Firstly.—The Government of QUEBEC, bounded on the Labrador Coast by the River St. John, and from thence by a line drawn from the head of that river, through the Lake St. John, to the south side of the lake Nipissim; from whence the said line crossing the river St. Lawrence, and the Lake Champlain in forty-five degrees of north latitude, passes along the high lands which divide the rivers that empty themselves into the said River St. Lawrence from those which fall into the sea, and also along the north coast of the Bay des Chaleurs, and the coast of the Gulf of St. Lawrence to Cape Rosiers, and from thence crossing the mouth of the River St. Lawrence by the west end of the Island of Anticosti, terminates at the aforesaid River St. John."

The utter impossibility which is now known to exist, of joining the two extremities of the Line therein described as passing "along the high lands," and also "along the north Coast of the Bay des Chaleurs," and a similar inconsistency which had been previously discovered and imperfectly remedied in another part of the same boundary line, by the description of that line in its counterpart, the Quebec Act, render that document as well as the latter wholly inapplicable, for any geographical purposes, to the present question.*

It is now time to consider the particular expressions of the Treaty in which the difficulties of this Question are involved, and it may be hoped that the preceding inquiries and re-

* A further explanation of this will be hereafter given.

marks will contribute effectually to their solution. The precise words of the second Article are these, "From the north-west angle of Nova Scotia, viz. *that angle which is formed by a line drawn due north from the source of St. Croix River to the Highlands*, along the said highlands which divide those Rivers that empty themselves into the River St. Lawrence, from those which fall into the *Atlantic Ocean*, to the north-westernmost head of Connecticut River."

This passage declares that the "*north-west angle of Nova Scotia*" was to be the point of departure for the Boundary Line of the United States. What does the north-west angle of Nova Scotia mean? The words which follow in the treaty explain its signification: "*That angle which is formed by a line drawn due north from the source of St. Croix River to the highlands.*" This definition, which was not in the Article as first proposed by The United States, and which was, therefore, in all probability, made necessary by some subsequent consideration, evidently comprehends two lines: the one artificial, viz: a due north line drawn from the source of the River St. Croix; the other, a natural line, formed by one of the most striking features of the country, that is to say, the "Highlands." The former of these Lines having been sufficiently ascertained for the purposes of this investigation,* the first object of the present inquiry is to fix the proper sense of the term "Highlands" as intended by the Treaty.

It cannot be denied, with any appearance of reason, that in common usage the word "Highlands" suggests the idea of a mountainous tract or range of conspicuous elevations. Such is the idea we naturally convey in speaking of the Highlands of Scotland or of those of the Hudson River. By the word Highlander is meant, in general, a Mountaineer.

It may safely be asserted that a tract or range of high broken land, rising occasionally into eminences seen from a distance along the horizon, was in part known and in part believed to exist along the heads of all those Rivers which water the eastern parts of New England from the Connecticut to the Penobscot, and so onwards to the St. Croix. The passages which have been quoted from Pownall's "Topographical description" confirm the justness of that impression.

* An exploring line only, run by the compass, with occasional allowances for the variation of the needle, has been traced from the source of the St. Croix due north, by the Surveyors under the fifth article of the treaty of Ghent.

The very manner in which the term "Highlands" is first used in the Treaty is not indifferent as to the intention of the Negotiators in selecting a word, which was not necessary to the expression of their idea, when divested of all reference to visible elevation. The term "Height of Land" was well known in America, and frequently used in works, with which the Negotiators of the Treaty cannot be supposed to have been unacquainted, to express any land immediately separating head waters falling off on each side in opposite directions. We are not then at liberty to divest the word actually chosen by the Negotiators of its own proper signification, especially as it is used, *in the first instance*, without any epithet or qualification whatever calculated to change or modify the impression, which, taken alone, and by itself, it cannot fail to convey. The words of the definition, as quoted above from the Treaty, are "from the source of *St. Croix River to the Highlands*;"—to the Highlands positively, and without any addition. It is not till the ensuing clause, where the same word is used again, not, as before for the purpose of laying down the point of departure of the northern Boundary Line, but in order to indicate the direction which it was to take on leaving the point so laid down, that the Highlands are designated with reference to certain Rivers divided by them.

It is not however intended to call in question the indissoluble connection subsisting under the Treaty between the Highlands and the Rivers, but merely to enforce and keep in view the propriety of not entirely changing the natural character and signification of so prominent a term of the treaty on the very inadequate and erroneous grounds advanced by the Americans.

Even on Mitchell's map, to which the Americans are so apt to refer, there are traces of its having been thought at that time that elevated tracts or ranges of high land, more or less marked with conspicuous eminences, lay generally to the north of the Rivers falling into the Atlantic Ocean. On comparing that part of Mitchell's map with other parts which represent the known mountainous regions, such, for instance, as New Hampshire, but little difference is perceptible in those graduated marks which are there used, as in other maps, to indicate hills or mountains.

There is no doubt however, that, in fixing the true sense of the Treaty, the term "highlands" must be taken in connexion with the words "dividing Rivers," which immediately follow it in every instance but the first. These words

themselves must not be detached from the remainder of that clause, which goes on to specify the particular Rivers divided by the highlands in question, namely, "those that empty themselves into the River St. Lawrence," and "those which fall into the Atlantic Ocean." It thus becomes necessary to ascertain what Rivers are meant by the Treaty, in order to settle, with the requisite degree of clearness, along what Highlands, or parts of the Highlands, the Boundary Line is to be drawn.

There would be less difficulty in deciding this question if all the waters of the disputed Territory came within one or other of the two classes specified above. But there are other Rivers in that part of the Country, and these Rivers fall neither into the River St. Lawrence nor into the Ocean, but into the Gulf of St. Lawrence, (or more properly into the Bay of Chaleurs,) and the Bay of Fundy.

It has been affirmed on the part of the Americans that "the Treaty recognizes but two classes of Rivers," and, therefore it is inferred "that all the Rivers met by the due north line which do not actually empty themselves into the River St. Lawrence according to its known limits, are, by the Treaty, considered as falling into the Atlantic Ocean." The assertion and the inference must alike be met by a positive contradiction. It is true that the Treaty only *names* two distinct classes of Rivers in the clause under consideration; but the same Treaty affords abundant evidence that other Rivers, separate and excepted from the two classes, thus specifically named, were also in the contemplation of those who carried on the negotiations; and the very same clause of the Treaty contains an express limitation, which was evidently used on purpose to preclude the chances of misconstruction incident to a less cautious wording of the Article, and which, if that had not been the case, it is very difficult to believe that the American Negotiators would have retained or admitted.

The Article respecting Boundaries originated, as it has been stated, with the American Congress. Notwithstanding the alterations which it underwent in the course of Negotiation, the term "Atlantic Ocean," as applied to the Rivers contradistinguished from those which fall into the River St. Lawrence, remained in that Article. But although the two words remained, the proposition with which they were immediately connected had experienced an essential change. By the Treaty Article, the Eastern Boundary of The United States is made to pass along the river St. Croix. According

to the Article originally drawn up by the American Congress and subsequently proposed by their Plenipotentiaries to that of Great Britain, the River St. John, from its source to its mouth, was to have occupied in the Treaty the place of the St. Croix. The result of carrying such a proposal into effect, would have been that the Highlands along which the Boundary Line was to pass, would have commenced near the head waters of the Penobscot, and as the line was to be carried westward, along those parts of the highlands which immediately divide the head waters of the Penobscot and Kennebec, both strictly Atlantic Rivers, from those of the Chaudiere, there was an evident and special propriety in employing the more limited term, applied, as it then was, exclusively to rivers falling into the Atlantic Ocean. There is the more reason to believe that the adoption of this term is solely attributable to the position of the spot where the Highland Boundary was to begin, since it was substituted for the more comprehensive word "*Sea*," which appears in the corresponding part of the Proclamation of 1763, whence the Congress of The United States had, doubtless, borrowed the substance of many parts of their proposed Article.

The Proclamation itself has been appealed to in proof that the terms "*Sea*" and "*Atlantic Ocean*" were synonymous. But in those parts of the Proclamation in which Boundaries are defined, and which were consequently drawn up with a closer attention to the expression, the Atlantic is manifestly used in its limited and more appropriate sense as contradistinguished from the Gulfs with which it communicates. Referring to the Government of East Florida, the Proclamation limits it by the course of the River St. Mary's to the "*Atlantic Ocean*," and "to the east and south by the *Atlantic Ocean* and the *Gulf of Florida*."

Nothing can be more clear or positive, than the distinction established in the Treaty Article between the Atlantic Ocean and the Bay of Fundy.

The extreme western limit on the sea coast is described as formed by a line "drawn along the middle of St. Mary's River to the *Atlantic Ocean*." The extreme Eastern limit is described as formed by a line "drawn along the middle of the River St. Croix from its mouth in the *Bay of Fundy*," &c.

That Article after describing other parts of the general boundaries, concludes thus:

"Where the aforesaid boundaries between Nova Scotia "on the one part, and East Florida on the other, shall res-

"PECTIVELY touch the Bay of Fundy, AND the Atlantic Ocean."

If one of these two terms is to be taken as comprehended in the other, why specify both? The declaration that the boundaries, eastern and western, of the United States, should touch the Atlantic at each extremity of the country, would surely have been amply sufficient for all purposes of delimitation, had not the term "*Bay of Fundy*" been intended as totally distinct from the term "*Atlantic Ocean*."

Maps, Proclamations and Treaties, all concur in giving a distinctive and special appellation, as well to the Bay of Fundy as to the Gulf of St. Lawrence. The line of separation between this Gulf and the River of the same name is established by the Royal Proclamation of 1763. By similar authority it is that the Limits of the Bay of Fundy, as separated from the Atlantic Ocean, have been established. The Charter of James I. to Sir William Alexander, in 1621, describes the Boundary of Nova Scotia as beginning at Cape Sable, and after extending thence to St. Mary's Bay, crossing by a direct line the entrance of the "Great Bay" to the St. Croix River. In the Commission of Mr. Montague Wilmot, Governor of Nova Scotia, in 1763, the Boundary Line is described as passing "*across the entrance of the Bay of Fundy from Cape Sable to the mouth of the River St. Croix*." Again, the mouth of the River St. Croix is declared by the Treaty of 1783, to be "*in the Bay of Fundy*." The Commissioners under the Fifth Article of the Treaty of 1794, decided that the mouth of the River was at a point in "*Passamaquoddy Bay*;" and the Treaty of Ghent declares the "*Bay of Passamaquoddy to be part of the Bay of Fundy*."

In all these Documents the limits of the Bay of Fundy are substantially the same, and quite conformable to the Geographical character of the place. The position and limits of the Bay of Fundy being thus clear, and the distinction between that Bay and the Atlantic Ocean being equally so in the Treaty, when speaking of the Sea Coast, it follows beyond controversy, that according to the meaning of the Treaty, in this part of it, the Atlantic Ocean begins only where the Bay of Fundy ends, and that the framers of the Treaty, when thus using the term Atlantic Ocean, had in view that part of the Sea, which lies westward of the mouth of the Bay of Fundy. The United States must, therefore of necessity, err, when interpreting the Treaty in such manner as to suppose the Bay of Fundy included in the term Atlantic Ocean, as a general appellation applied to the Sea Coast.

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The framers of the Treaty, when describing St. Mary's River as going "down to the Atlantic Ocean," and the River St. Croix as having its mouth in the Bay of Fundy, had, no doubt, particularly in view the Coast of the Atlantic Ocean, which terminates at the Bay of Fundy, where the name of that Bay begins to have its appropriate and exclusive application. And this being the case, as beyond all controversy it was, is it credible that in the very next line of the same instrument the same men should have used the same term of "Atlantic Ocean," intending that it should comprehend the whole Coast together with the Bay of Fundy and the Gulf of St. Lawrence, both of which are particularly marked on the map, and are universally known by their distinctive appellations, and with a similar precision of limits, as the River St. Lawrence itself; these three names being, moreover, all of them used in the Treaty without description, as sufficiently distinguishing the several places which they respectively designate?

In answer to the American argument "that if the Rivers "which fall into the Atlantic through a Gulf, Bay, or Inlet, "known by a distinct name, are not under the Treaty of 1783, "Rivers falling into the Atlantic Ocean, there is not a single "River that could have been contemplated by the Treaty as "such to which the description applies," it is to be observed, that the mention of *St. Mary's River* is alone sufficient to prove that there are Rivers considered by the Negotiators as discharging into the Atlantic Ocean without the intervention of any Bay or Gulf. It may be added that some of the Bays mentioned by the other party in support of his argument, are mere enlargements of the mouths of Rivers, and, like Penobscot Bay and Sagadahock Bay, derive their names from the respective Rivers; which names, moreover, are little known beyond the immediate vicinity of the place.

The Treaty Article expressly characterizes Rivers by reference to their mouths. Speaking of the River St. Croix it has these words: "east, by a line to be drawn along the "middle of the St. Croix, *from its mouth in the Bay of Fundy* "to its source." The River St. Croix being thus characterized, as a River having its mouth, that is, terminating, in the Bay of Fundy, can never be a River falling into the Atlantic Ocean, between which and the River so described, a certain space, namely, a part of the Bay of Fundy, intervenes. Still less, then, can the River St. John, which falls into the Bay of Fundy considerably to the East of the St. Croix, and which is, therefore, more within the entrance of

the Bay, be classed among the Atlantic Rivers specified by the Treaty. On the other hand, St. Mary's River is designated in the same Article as reaching the Atlantic Ocean. For the south boundary line passes "along the middle of St. Mary's River to the Atlantic Ocean;" while it is described in the same article, as "*touching the Atlantic Ocean.*" Now, if the boundary line passes along St. Mary's River till it *touches the Atlantic Ocean*, it is evident that there is no interval between the River and the Ocean, but, on the contrary, that where the former terminates, the latter begins. In this manner we see that the two Rivers differ essentially in that particular characteristic by which the Treaty has distinguished them; and thus two classes of Rivers, comprising respectively the one and the other of the two individual rivers just named, and both being distinguished from those Rivers which fall into the St. Lawrence, are clearly exhibited in the Treaty.

If these reasons are sufficient to satisfy any reasonable and impartial mind that, in the interpretation of the Treaty, the Bay of Fundy must be considered as separate and contradistinguished from the Atlantic Ocean, there can be no doubt as to the obligation of regarding the Gulf of St. Lawrence and the Bay of Chaleurs as equally distinct and unconnected in any Treaty sense with the main Ocean.

It has been asserted on the part of the United States, that the Gulf of St. Lawrence is designated in the 3d Article for a special purpose, foreign to the question of boundaries, and that it is further mentioned as a place in the Sea. The words of the Article are these: "The people of the United States shall continue to enjoy, unmolested, the right to take fish of every kind on the Grand Bank, and on all other Banks of Newfoundland; also in the Gulf of St. Lawrence, and at all other places in the Sea, where the inhabitants of both Countries used at any time heretofore to fish."

It is perfectly true that the Gulf of St. Lawrence is designated in this Article with reference particularly to the right of fishing, and not to any question comprized in the Second Article. But it is equally true that there is no reason, with respect to that question, why it should have been named at all in the Treaty. That the Bay of Fundy and the Atlantic Ocean are contradistinguished from each other, has been proved to demonstration. Such being the case, the due north line, as will be shewn yet more convincingly hereafter, could not have been intended to intersect the River St. John and unless the eastern Boundary line were to intersect that

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river, and to pass considerably to the north of it, there would be no question either of its crossing any streams falling into the gulf of St. Lawrence and the Bay of Chaleurs, or of its terminating at any point immediately in their neighbourhood. Yet the Gulf of St. Lawrence, when mentioned in the Treaty, with reference to another subject, is named in a manner which marks its being known as having certain limits, a peculiar character, and separate jurisdiction, and which, in short, distinguishes it entirely from the Atlantic Ocean, except in so far as it is a part of the sea, of which the Atlantic Ocean also is a part.

The Bay of Fundy and the Gulf of St. Lawrence being, therefore, taken as distinct from the Atlantic Ocean, of which, more especially under the limitations of the Treaty, there can no longer be question, it follows, that the Rivers, which fall into those separate and distinct portions of the Sea, must be considered as forming another class of rivers, such as writers* on the topography of North America have in part noticed, and to which the Treaty indisputably points. Of this class of rivers two only are immediately in question, namely, the *Restigouche*, falling into the Bay of Chaleurs, itself joining the Gulf of St. Lawrence, and the *St. John*, which falls into the Bay of Fundy. These rivers cannot, therefore, belong to the class of Atlantic Rivers specified in the Treaty; and, consequently, it is not true that "all the rivers met by the due north line, which do not actually empty themselves into the River St. Lawrence, according to its known limits, are, by the Treaty, considered as falling into the Atlantic Ocean."

This is not all: there are other lights to guide us to a true interpretation of the Treaty, and to shew with sufficient clearness what Highlands were meant to be designated in its Second Article.

The United States proposed at first the River St. John as a part of their Boundary on the side of Massachusetts. The Line, as described in the instructions of Congress, was "to be drawn along the middle of St. John's River, *from its source* to its mouth in the Bay of Fundy." On Mitchell's map the course of the St. John, as to length and general direction, is laid down nearly as in maps of the present day. It appears from the Report of the Committee of Congress, which has been noticed above, that "when the Boundaries of The United States were declared to be an ultimatum, it

* See Pownall's topographical description.

"was not thought advisable to continue the War, merely "to obtain Territory as far as St. John's River." And further, it has been shewn by unquestionable authority, that in the course of the negotiations at Paris, Great Britain claimed as far west as the Penobscot and Kennebec Rivers.

Combining these several circumstances, it is perfectly inconceivable that the British Government could ever have intended by the Article, which they ultimately agreed with the United States in concluding, to carry the Boundary Line to the north of the St. John, and by that means, as it has been since ascertained, to make over to an independent Government a much larger extent of Territory than they themselves retained towards the Coast by adopting the St. Croix as the Eastern Boundary Line.

The sacrifice on the part of Great Britain would not have been confined to the loss of a certain number of square miles. The direct communication between Nova Scotia and Canada would have been thereby surrendered, and lands in dependence on Canada would have been transferred to the United States, no longer having the character of British Colonies, but that of Independent Sovereignities. So far from Great Britain receiving under the Treaty any compensation for such sacrifices, her Negotiators had already made other sacrifices of no inconsiderable amount in settling the eastern and northern Boundaries of Massachusetts. By consenting to take the St. Croix for a Boundary they had receded from their claims to the Territory extending westward along the coast from that River to the Rivers Penobscot and Kennebec. By consenting to the line of Highlands proposed in the American Instructions, they gave up to The United States all that Territory which is situated between the Highlands, extending along that part of the line, as to which the British and American Commissioners are agreed, and the northern Boundary of the old Province of Maine. The limits of this Province, it is well known, were regulated by Charles the First's Grant to Sir Ferdinando Gorges; and the northern limit, according to that grant, was a line drawn westward from the River *Kennebec* to the River *Piscataqua*, at a distance of 120 miles from the mouth of each River. The head waters of the *Kennebec* being at a much greater distance than 120 miles from the Atlantic Ocean, a considerable interval was necessarily left between the northern limits of Maine, regarded as co-extensive with the Grant of Sir Ferdinando Gorges, and the above mentioned Highlands, in which the head waters of the *Kennebec* are situated. To

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this intermediate Territory it would have been impossible for The United States to substantiate their claim under the Charter of Massachusetts; which Colony acquired the territory by purchase. The outline of this Grant is traced on Mitchell's map in strict conformity with its true description.

Supposing, what is most probable, that the conflicting claims of the two Parties were so balanced, or rather so involved in confusion and obscurity, as to offer no clear and safe principle for their regulation, but that of mutual convenience and conciliation, the Territory intervening between the Rivers St. Croix and St. John was surely but a wretched equivalent for those extensive parts of the British Claim which were given up to The United States. Supposing on the other hand, notwithstanding the strong and convincing evidence already furnished to the contrary, that the final adjustment was grounded on some specific principle of right, of what such principle, at all capable of application to the whole extent of disputed Boundary, is there the slightest trace? The charter principle, as we have seen, would have thrown no old Province of Maine, and consequently the northern limits of Massachusetts, in that quarter, considerably to the south of the Highlands. The same principle, applied to the Sagadahock Territory, would have carried those limits, *at the northern extremity of its east boundary*,* to the River St. Lawrence. The principle of the proclamation would have confirmed the Line of Boundary between that River, from the point where it is struck by the parallel of 45° north latitude, and Lake Nepissim, as proposed in the American Instructions. A combination of the two principles is equally ineffectual to explain what must be termed the anomalies of the Treaty arrangement, on any supposition but the natural and necessary one of its having been grounded on mutual convenience, since neither Charter nor Proclamation could have warranted the Parties in carrying the Boundary Line, as it was actually settled to be carried—not, as the latter would have prescribed, to the north of the Great Lakes, nor, as the former indicated, along their southern shores—but through the centre of those inland Seas, and along the mid-channels of their respective water communications.

It is not the interest of Great Britain and her Colonies that is alone concerned in this discussion. A common interest, the interest of the Treaty, and of both Parties is at stake.

In an early part of these remarks it was shown that in the absence of any express principle specially applied to the ques-

* This is explained hereafter.

tion of boundaries, except that of settling them so as to prevent future disputes, the general intention of the Treaty, as declared in its preamble, was to adjust them in such a manner as to "secure to both Countries perpetual peace and harmony" by establishing "a satisfactory and beneficial intercourse" between them, "on grounds of reciprocal advantage and mutual convenience." It is evident, with respect to the Boundaries, that nothing was more likely to aid this wise and benevolent object of the Treaty, by preventing collisions, and promoting good neighbourhood between the Parties, than the adoption of a Line which should have the effect of placing the rivers and principal water courses of their respective Territories entirely within the reach of each. On this momentous ground, which involves the highest considerations affecting the welfare of human societies, as well as on those which have been previously advanced, is rested the firm moral conviction that the framers of the Treaty could not possibly have contemplated so entire a departure from the principles of that instrument, as the forming a Boundary between Nova Scotia and Massachusetts, which would have the effect of throwing the upper half of the St. John,—the most important river of the country,—within the Territory of The United States. Equally difficult is it to conceive that, if they had obtained such an understanding with Great Britain, the American Commissioners, who were naturally more alive to the exclusive advantage of their States, and from long and familiar acquaintance with Colonial interests, were by no means likely to expose them to risk by an oversight in the wording of the Treaty, should have allowed the term "Atlantic Ocean" to remain in its Second Article after the substitution of the St. Croix for the St. John, the proposal of which last mentioned River, "*from its source to its mouth,*" was to all reasonable appearance, the cause of its first introduction into that Article, in place of the more comprehensive word "Sea," employed in the Proclamation of 1763.

It follows, of necessity, from the whole of what precedes, that the Highlands intended by the Treaty are to be looked for *south of the River St. John*. The American Negotiators having desisted from their demand of that River, and the British having equally rejected the substituted proposal of deferring the settlement of the Boundary till after the conclusion of Peace, an arrangement carrying with it the consequences of yielding to The United States at once a greater extent of territory than that which was comprised in the ac-

ceptance of the St. John as a Boundary, without any reciprocal advantage to Great Britain, but with results most injurious to her just and necessary interests, and also in direct contradiction to the governing principle of the Treaty, may be fairly, and without hesitation, pronounced to be impossible.

What reasons may have prevailed with the Negotiators, on the supposition that they intended to designate Highlands to the south of the St. John, as those which the due north line was to meet, not to declare that specific intention by an additional clause of the Treaty, can now be only matter of conjecture. But strong probabilities are not wanting to aid the discovery of the truth even in this particular also.

In the first place, by retaining in the clause respecting Rivers and Highlands the term "Atlantic Ocean," in connection with the limited sense unequivocally attached to it in another part of the same Article, the British Plenipotentiary might have reasonably hoped to preclude any future disagreement on the subject. In the second place, the insertion of a definition of the north-west angle of Nova Scotia, calculated to obviate any embarrassment which might spring out of the use of that term as a known and settled point of departure with reference to the Colonial Boundaries, may also have contributed to satisfy him as to the efficacy of the wording, as it now stands in the Treaty.

It may surely be assumed that the Negotiators meant to define the Boundary in a spirit accordant with the just and liberal views declared in the preamble of the Treaty. If it had been possible to describe the whole Boundary Line with minute exactness, their desire to prevent future disputes would doubtless have led them to do so. But they evidently did not possess the topographical details necessary for such extreme precision. The Boundary was, therefore, of necessity, to be defined in general terms. A glance on Mitchell's Map was sufficient to shew them, that a due north Line could not be drawn from the source of the St. Croix to the supposed latitude of the head waters of the Atlantic Rivers, flowing westward of that River, without a probability of its striking some of the smaller and very inconsiderable lakes or water courses falling into the St. John. To have changed the grand features of their agreement, on account of this petty consideration, would have been unwise; and at the same time, there was an obvious and disproportionate inconvenience in guarding in express terms, against a mere contingency of no practical importance. Again, they must have known that a considerable part of the Boundary Line would

be traced along the Highlands situated nearest to the head waters of the Connecticut, and immediately dividing the Kennebec from the Chaudiere. All Parties agree that the words of the Treaty apply, without shadow or possibility of doubt, to that portion at least of the Highland Boundary. The Highlands, which were *known* to range along the sources of the more Eastern Atlantic Rivers, were *believed* to be a continuation of the others. In order to frame a definition more nicely and literally adapted to the varying circumstances of the Line, as thus prolonged, it would have been necessary to obtain an exact knowledge of that part of it, where the change of circumstances was to operate; and this degree of precision, as already observed, was necessarily unattainable from the moment that the source of the St. John had ceased to be in view as the proposed north-west angle of Nova Scotia. The due north Line was intended to strike Highlands to the south of the River St. John. At the point of intersection, the Boundary was to be carried west in such a manner as to place all the rivers flowing on that side of the St. Croix, and consequently Atlantic Rivers, within the Territory of The United States. Towards the other extremity, there was that large portion of the Highland Line, respecting which both Parties are agreed. Upon these data, it is by no means extraordinary that the Negotiators should have fallen into the error (for such the pending difference authorizes us to call it) of supposing that they had sufficiently provided, by the present wording of the Treaty, for the due direction of that part of the Line, which was intended to unite the point of departure on the North Line with the north-westernmost head of Connecticut River, by joining on to that other part of the same Line which *immediately* separates the sources of the Kennebec from those of the Chaudiere.

These probabilities, which are not put forward as known undoubted truths, being nevertheless, such evidences as the nature of the case admits, must have their weight in removing the objection to which they immediately relate, and must contribute, in that respect, to confirm and fully establish the position previously maintained on such just grounds, and by so many cogent and convincing reasons; namely, *that the Highlands of the Treaty were meant to be fixed to the south of the St. John.*

If, on the other hand, it be supposed, notwithstanding so many proofs to the contrary, that it was the intention of the Negotiators to carry the due north line to that point,

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which the American argument maintains to be the true north-west angle of Nova Scotia, the silence which they have kept with regard to the intersection of the River St. John is really very difficult, if not impossible, to explain. Such silence is, on that supposition, the more inconceivable, since it must be agreed that a principal object of the Treaty was to separate the rivers along the adjoining part of the frontier, and to place within the Territories of the respective Parties the whole of each class of rivers so separated. The motives and evidences of this intention are so numerous and convincing, that even if it were true, as the American argument asserts, that no sufficient criterion for determining the direction of the northern Boundary Line is to be found, unless the precise meaning which that argument assigns to what respects the dividing rivers be received without qualification, there would be still wanting sufficient grounds to justify a decision in favour of The United States. But this imaginary defect of the Treaty is, in truth, the mere offspring of a partial and unwarranted view of its terms and intentions.

There is no longer any real difference respecting the *Eastern* boundary of the United States. The difficulties which are now experienced, regard their *Northern* boundary, which is to pass along the Highlands designated in the Treaty as dividing certain rivers. What rivers they are, which are thus to be separated, has been abundantly shewn above. It has been proved that the Highlands in question were meant to be found south of the River St. John, and, also, that no river east of the St. Croix comes within the class of Atlantic Rivers specified in the Treaty. Hence, it is clear, that in carrying the boundary line westward to the Connecticut, the sources of the Atlantic Rivers are to be left entirely within The United States' territory, and those of the St. John, which intervene between the former and the head waters of the Rivers falling into the St. Lawrence, are to be left within the British line. The American argument has given to the Treaty expression "dividing Rivers," a narrowness of signification which is by no means borne out by the words themselves. The intention being clear as to the Rivers to be separated and therefore to be left within the territory of the respective parties, any highlands rising above the heads of one set of rivers to be separated must necessarily divide those rivers (in this instance the *Atlantic* Rivers) from the other set of rivers named in the Treaty, although they may not extend equally along the courses of these last

mentioned rivers. If this had not been the opinion of the negotiators, it may fairly be presumed that they would have adopted some more precise term in explanation of their particular meaning, and that the term "Atlantic Ocean" would, with equal certainty, have been exchanged for some other of a more comprehensive sense. To go the length of supplying the supposed omission and of enlarging the supposed limitation by a license of construction which cannot be admitted without defeating the general views of the Treaty, as declared by its introductory terms, and further established in the foregoing pages, is a course of proceeding dangerous in its example, and tending to introduce a new and unsound practice in the interpretation of Treaties.

The point of departure for tracing the boundary line is to be found where the due north line drawn from the St. Croix touches the Highlands south of the River St. John. It has been shewn above that the existence of such Highlands was to all appearance, a matter of general persuasion at the period of 1783, and several years before. That such has since continued to be the impression, there is no inconsiderable evidence to establish.

In the year 1792 the Government of Massachusetts sold, by contract, to two individuals, named Jackson and Flint, certain lands, the limits of which are thus described in the contract relating thereto, "*Westerly*, by a line on the east side of the great eastern branch of Penobscot River, at the distance of six miles therefrom; *easterly*, by the River Scoodic, and *a line extending northerly from the source thereof to the Highlands*; and, *northerly, by the Highlands*, or by the line described in the Treaty of Peace between The United States and His Britannic Majesty." From this description of the limits in question it is clear that the Northern Boundary of The United States, as determined by Treaty, was to be the northern limit of this tract, and also that, in 1792, the Government of the State of Massachusetts considered the great eastern branch of the Penobscot River as reaching to the Highlands which form that northern Boundary.

In an early edition of Greenleaf's map of Maine, the limits of Flint and Jackson's purchase appear to be marked out, though without the names, in conformity with the terms of the document quoted above; the line being therein represented as terminating on the Highlands in which are situated the head waters of the Penobscot and other Atlantic Rivers.

The "Statistical View of the District of Maine," published in 1816, by Mr Greenleaf, the American author, whose map has just been referred to, confirms the correctness of the conclusion to which the terms of the above-mentioned purchase inevitably lead.

The following is an extract from that work, "With the exception of a *small tract* at the eastern extremity, and *some detached* elevations along the central part of the north-western Boundary, the mountainous part of the district may be included within an irregular line drawn from the line of New Hampshire, not far from Saco River; thence proceeding north-easterly, and crossing Androscoggin River near Dixfield, Sandy River above Farmington, Kennebec River above Bingham, the west branch of the Penobscot at the Lake Pemmidumpkok, and to the *EAST BRANCH OF THE PENOBSCOT near the mouth of the Wassattaquoik*; thence north so far as to include the heads of the Aroostook; thence south-westerly to the head of Moose-head Lake, and thence westerly to the Boundary of the district near the sources of the Du Loup. The greatest length of this section is *from south-west to north-east*, about 160 miles; its greatest breadth about 60 miles; and it comprises about one-seventh part of the district. No observations have been made to ascertain and compare the height of the different elevations in this section; but from estimates which have been made on the falls of the rivers, proceeding from different parts of it, and from the much greater distance at which the mountains in the western part are visible, it is evident that the western, and particularly the north-western part, is much higher than the eastern; and the section *in its whole extent* may be considered as presenting *the highest points of land between the Atlantic and the St. Lawrence.*"

This very explicit passage permits no doubt as to the fact of there being at least as far east as the head waters of the eastern branch of the Penobscot, and as high north as the head waters of the Restook, a tract of mountainous elevations, answering in every respect to the Treaty term of "Highlands," and connected with the range which is situated immediately between the sources of the Kennebec and Chaudiere Rivers.

That there are Highlands so situated, with reference to those just described, as to offer a suitable place for a point of departure from the due north line, has been proved by the Reports of the Surveyors and Commissioners under the 5th Article of the Treaty of Ghent.

There would be no possibility of executing Treaty provisions, such as are now under consideration, if the utmost degree of precision were required, and if no allowance whatever was made for the unavoidable want of an exact local knowledge on the part of the Negotiators. It is one thing to define a boundary in general terms, another to describe it with a minute attention to details. The parties to the Treaty of 1783 did not possess the means of performing the latter office. They could only act upon the general ideas which they had then obtained of the state of the frontier country. They had no reason to doubt that Highlands, in which were situated the sources of the Atlantic Rivers, properly so called, extended across the meridian of the St. Croix, towards the St. John. They can hardly be reproached with not having sent a Commissioner from Paris, the seat of their negotiations, in order to ascertain, by actual measurement, the correctness of so reasonable a supposition. They did, however, what an inspection of Mitchell's map was well calculated to suggest. They agreed to form the Eastern Boundary of The United States by drawing a due north line from the source of the St. Croix to the Highlands, which the greater length of the course of the Kennebec and Penobscot Rivers, as compared with that of the St. Croix, was likely to render necessary. The details were unavoidably reserved for future settlement by means of an actual survey and delimitation.

It was to be expected that in making that survey and tracing the boundary line along the surface of the country, the localities would not be found to correspond minutely with the idea which had been previously formed of them. Whether it be supposed that the Highlands were intended to have the character of hilly or mountainous heights, or whether they were considered as mere lands, immediately separating the head waters of rivers, it is clear that there was more than one chance against their being found in strict conformity with the Terms, in which ever way they might be interpreted, of the Treaty. In one case the due north line might fail to reach any place of sufficient elevation; in the other it might be prolonged, even to the St. Lawrence, without intersecting any spot exactly situated between the head waters of the Rivers specified in the Treaty. The same disappointment might have been anticipated in drawing the north boundary line along Highlands, of whatever designation we suppose them to be. It appears that the peculiar characteristic of the river-heads throughout the disputed Territory, is to interlock with each other, and frequently to form

into large pools and spreading morasses. The defects in the line might indeed prove so numerous as to operate a decided change in its characteristic qualities, and render it altogether unfit for the application of the Treaty. But if every deviation from the strict rigour of definition,—an occasional break or the intervention of a swamp or valley in the line of Highlands—the want, in fine, of a single link in the chain, is to defeat and nullify the whole design of the Treaty, it will be extremely difficult to conceive by what means any arrangement is to be effected, or how it will be possible to satisfy either the one or the other of the claimants.

The place, called Mars Hill, is that which Great Britain claims as the point of departure for the northern boundary of The United States, and consequently as that spot which is designated in the Treaty as the north-west angle of Nova Scotia. It appears from the reports of the Surveyors, that the due north line crosses its eastern skirt, or flank, at a distance of about 40 miles from the monument, which marks the source of the St. Croix, as fixed in execution of the Treaty.

There are three points to be considered with respect to this elevation: 1°. Its height as compared with that of the country previously traversed by the north line; 2°. Its position relatively to the rivers; 3°. Its connection with the western range of Highlands.

With respect to the comparative height of Mars Hill, it will suffice to quote the following words of the American Surveyor: "The south peak is 175 feet higher than the north peak, and about 1000 feet above the general level of the adjacent country." This description is decisive of the superior height of Mars Hill, and the concurrent testimony of the Surveyors shews that no ground equal to it in elevation, by many hundred feet, is previously crossed by the North line.

The situation of Mars Hill, with respect to Rivers, is not to be taken, as the American argument insists, from the petty streams or rivulets falling into the St. John, in its immediate neighbourhood. Its principal summits are situated at a short distance westward of the north line, and consequently in the position intended by the Treaty, on that Highland tract which rises to the north of the Atlantic Rivers, and separates them as well from the Rivers of the St. Lawrence, as from the River St. John and its principal tributary, the Restook. The due north line does not indeed pass over its highest peaks; but it is sufficient for every liberal and effective pur-

pose of the Treaty, that the line intersects the rising grounds which form its elevation from the banks of the St. John.

As to the third point, the British Surveyor, Bouchette, in his Report dated the 21st of May, 1818, observes, that he took "the bearings of the principal range of highlands extending from Mars Hill to the Catahdin Mountain; the general course of which is N. N. E. and S. S. W., and highly conspicuous for its height." Another of the Surveyors, Odell, states in a report filed the 11th of May, 1819, as follows: "Looking westward from this place (Parks's, near the Houlton Settlement,) which is itself considerably elevated, and is easily seen from the top of Mars Hill, there appears a continued range of highland, the view of which is terminated on one side by Mars Hill, and on the other by the Spencer Mountains." The general result of these documents with respect to Mars Hill and the adjacent heights towards the west, is that "A generally hilly country is found to extend towards the eastern branch of the River Penobscot." This is confirmed by the report of the American Surveyor Loring, dated in December, 1820. It may be added, that the British Assistant Surveyor, Campbell, describes the Highlands where the Monument is situated on the height of land between the Kennebec and Chaudiere Rivers as extending in a N. E. to E. N. E. direction, and consequently tending to communicate with the Highlands at the sources of the Penobscot River.

The foregoing information will hardly warrant us in concluding that the tract or range of highland country stretching from Mars Hill, or its immediate neighbourhood, towards the sources of the Connecticut, is equally continuous and of one unbroken regularity throughout the whole extent of the Boundary Line. But such continuity of height was not to be expected, nor is it necessary for any presumable purpose of the Treaty. It does, however, appear that there is a chain of highlands, not indeed of uniform elevation, but in which the head-waters of the Atlantic Rivers are situated, with the additional circumstance of their partaking generally of a mountainous or hilly character.

It has been urged on the part of the United States, that the three prepositions "*from*," "*along*," and "*to*," employed in defining the northern boundary line, "are the clearest and strongest which could have been selected for the purpose of declaring that the boundary, thus described, must, *through its whole extent, from its beginning to its termination*, be along highlands," such as they presume the

Treaty to have intended. This remark is, indeed, made on grounds which do not apply to the view taken by Great Britain of the same subject. It is, nevertheless, to be observed, that in two acts of the highest authority connected with this discussion, a Royal Proclamation and an Act of Parliament, the very same prepositions are used in order to describe lines, which have since been discovered to be too imperfect to admit of their being traced in conformity with this description. The Acts alluded to are the Proclamation of 1763, and the Quebec Act. The boundary described in the Proclamation has two evident interruptions in the course of its line, notwithstanding the use of the three prepositions, to which so much efficacy has been attributed. In the first place, the line, which is described as passing along the highlands, and also along the coast of the Bay des Chaleurs to Cape Rosiers, has an intermediate space to traverse between the highlands, wherever they may terminate according to the supposition hitherto maintained, and the north coast of Chaleurs Bay, for which no provision appears to have been made by the terms of the Proclamation. Secondly, there is a similar interval between Lake Champlain and the opposite extremity of the highlands, which do not extend to the shores of that Lake. According to the Quebec Act, the line was to go *from* the Bay of Chaleurs, *along* the Highlands, &c. *to* a point in 45° north latitude, on the eastern bank of the River Connecticut, keeping the same latitude directly west through the Lake Champlain. This amendment of the Proclamation itself occasioned a fresh difficulty, which it was subsequently found necessary to obviate in the Treaty. A line described as passing along the highlands in which the sources of the Connecticut are situated could never, it is manifest, have reached a point on the bank of that river at a considerable distance below its sources. What relates to the want of continuity between the Bay of Chaleurs and the Highlands is the same in the Act as in the Proclamation.

There is a further consideration relating to Mars Hill, which embraces one of the arguments most urged by the United States in support of their line, as identified in their opinion with that of the ancient boundaries, and which it is, therefore, convenient to notice separately.

The Treaty, as we have seen, fixes the point of departure for the Northern Boundary of the United States at a place, where the due north line, drawn from the River St. Croix, touches the Highlands. To that place, wherever it may

happen to be, the Treaty has given the name of "*the north-west angle of Nova Scotia*;" and this expression it is, which is in fact the principal, and essentially the sole, foundation of the American claim. The supposition of a perfect identity between the line, as now proposed by The United States, and the ancient provincial boundary, is at the bottom even of that part of their argument, which turns on a literal interpretation of the Treaty Article. Without this supposition,—which is altogether conjectural, and incapable of satisfactory proof, and the merits of which cannot be fully discussed without unsettling what the Treaty was most certainly intended to settle in a peremptory and conclusive manner,—The United States can make no progress whatever towards setting aside those important limitations, which the words of the second Article of the Treaty, as already explained, do most undoubtedly convey. They seem to have overlooked an inconvenience and striking objection which necessarily result from this mode of treating the question, namely, that they apply themselves thereby not to the completion of their own boundary, nor to the adjustment of such part of the British boundary line, as corresponds immediately with their own, but to the regulation of other parts of the British Boundary,—the northern boundary of Nova Scotia, for instance,—with which they have no right whatever to interfere, and the final arrangement of which is now, as it always has been, wholly and exclusively in the competency of the British Authorities. Such was not the object and intention of the Treaty of 1783, the second Article of which, as we have already proved, concerns the definition of The United States' boundaries alone, and affects the boundaries of the British Colonies only in those parts of the frontier where the territories of the one party border immediately on the territories of the other.

The words "*north-west angle of Nova Scotia*" were introduced into the Treaty from the article respecting boundaries, drawn up by the American Congress, and proposed to Great Britain by the American Commissioners at Paris. In that article "*the north-west angle of Nova Scotia*" was coupled with the proposal of carrying the boundary line *along the channel of the River St. John from its source to its mouth*. In other words, it was then distinctly proposed by The United States that "*the north-west angle of Nova Scotia*" should be fixed at the source of the River St. John, and that a considerable part of their northern boundary line should pass along the channel of that River. It has already

been shewn to demonstration, that, in rejecting that proposal, —for the sake of maintaining which (be it remembered) the American Congress had expressed the opinion that it would not be worth while to carry on the war,—Great Britain must obviously have meant to insist upon a boundary line *within* the line of the St. John; but, with reference to that proposal, coupled as it was with “the north-west angle of Nova Scotia,” it is natural to inquire by what means the line so proposed was to be reconciled with the line of continuous Highlands from the Connecticut River to Chaleurs Bay, along which The United States pretend that the northern boundary of Nova Scotia as well as their own must now uninterruptedly pass in virtue of that same expression in the Treaty.

The truth is, that the words in question are wholly subordinate to the definition which immediately follows them; and the definition was, in all probability, introduced into the Treaty for the express purpose of guarding against any misconstruction likely to arise from their being retained in the Article, after it had undergone the amendments which were described above. If, as the American argument asserts, the north-west angle of Nova Scotia was a known and undoubted spot, the mere mention of it in the Treaty would have been sufficient, in like manner as the mention of the Bay of Fundy and the Gulf of St. Lawrence by their respective names, without particularizing their limits, suffices to convey a distinct and adequate idea of those two separate portions of the sea. But it is not a little remarkable, that the north-west angle should have been named without the definition, precisely in that Article, which would have fixed it in a spot altogether and entirely inconsistent with the line now held up by The United States as that which coincides with the line of the ancient boundaries and of the Treaty; and that the definition should have been added to the name of the angle exactly in that other Article, where the name alone is asserted by The United States to have so definite and distinct a signification as to exclude the possibility of any other construction.

In this confusion of circumstances one thing may be affirmed without hesitation; namely, that the position of the north-west angle of Nova Scotia was no more known in 1783, than it is known at this moment. The Charter of Massachusetts, as The United States interpret it, would place that angle on the right bank of the St. Lawrence. The Proclamation of 1763, and the Quebec Act, interpreted by them, would place it on certain Highlands south of those Rivers

which fall into the St. Lawrence. The first proposal of their Negotiators at Paris would place it at the source of the River St. John. The fact is, that the north-west angle of Nova Scotia is yet to be formed ; and this has been admitted by high American authority.

The American argument appears to have confounded the assumption in theory of the point designated in the Treaty as the north-west angle of Nova-Scotia, with its existence in fact, although it is evident that these two ideas are by no means necessarily the same. Even the true position of the River St. Croix, from the source of which the north line was to depart, upon which this assumed point was to be found, was not determined till fifteen years after the conclusion of the Treaty of Peace ; and when the Commissioners appointed for that purpose entered upon the consideration of the subject, they found they had to decide between two rivers, both having claim to the appellation of the St. Croix, and between several sources of that one of the two to which the preference was ultimately given ; and further, that, taking the two extreme claims on the east and on the west, the distance between their meridians was no less than 40 miles.

From the manner in which the north-west angle of Nova Scotia is mentioned in the Treaty, and the terms in which the north-east angle of Maine is *described* in the same sentence, it might have been supposed in 1783, whenever the position of the boundary line should be ultimately settled, there would be a point where the southern boundary of Canada would, in forming the northern boundary both of Massachusetts and Nova Scotia, be met by the dividing line between the two latter Provinces—in other words, that wherever the north-east angle of Maine should be formed, an angle for the adjacent British Province must likewise be determined. That the finding of the latter was to be consequent to, and not to govern the position of the former ; that it was a point to be sought, and not a point fixed, is admitted by an authority which The United States will not be inclined to dispute ; namely, Mr. Sullivan, formerly agent on the part of The United States, before the Commission for determining the true River St. Croix, afterwards Governor of the State of Massachusetts, and also the author of a History of the District of Maine.

Mr. Sullivan, in the course of his argument before that Commission, expresses himself as follows :—

"In the Treaty the angle is described in these words,
" *that Angle which is formed by a line drawn due north*

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“ *from the source of the River St. Croix to the Highlands.*’
“ An angle is the point of intersection on the mutual inclina-
“ tion of two lines, and therefore to give a second line the
“ Treaty adds; ‘*along the said Highlands which divide*
“ *those rivers that empty themselves into the River St.*
“ *Lawrence from those which fall into the Atlantic Ocean;*’
“ but still a course to exhibit the inclination of this second
“ line was necessary, and it was therefore added, ‘*to the*
“ *north-westernmost head of Connecticut River.*’ Then
“ the Treaty contemplates a line running on the Highlands
“ so as to divide the rivers which run into the St. Lawrence
“ from those which fall into the Atlantic Ocean, but whether
“ this is to be a direct or crooked line is not ascertained in
“ the Treaty. If it divide those rivers as above expressed
“ there can be no pretence of its being a straight line. *It is*
“ *either in its general inclination or in its direct course to*
“ *run to the north-westernmost head of Connecticut River.*
“ There can be no angle existing, as known to any man,
“ until those lines are formed, for the point of their incli-
“ nation is but a *mathematical deduction from a perfect*
“ *recognition of the lines themselves.* It was found at a very
“ early period that the rivers flowed from the southward into
“ the River St. Lawrence, and from the northward into the
“ Atlantic Ocean. *This raised a reasonable conjecture that*
“ *there was a ridge of Highlands which divided those rivers*
“ *from each other; but the savage state of the Country, the*
“ *continued wars of the Nations, and of the Indians, and the*
“ *immense labour of traversing such an extensive wilderness,*
“ *raised obstacles too great to be overcome by the prospect*
“ *of any advantages which could possibly be the result.*
“ *Indeed we are as entire strangers to these Highlands,*
“ *and the sources of the rivers on either side of them, as we*
“ *are to the sources of the Nile.* In the Grant of King James
“ to Sir William Alexander, the Highlands do not appear to
“ be mentioned; the words are, ‘*unde per imaginariam*
“ *directam lineam, quæ pergere per terram seu currere*
“ *versus Septentrionem concipietur, ad proximam navium*
“ *stationem, fluvium vel scaturiginem in magno fluvio de*
“ *Canada sese exonerantem.*’ The Highlands are here
“ made no part of the boundary, but the line, *as an imagi-*
“ *nary line,* was to be drawn towards the north or northerly
“ to the source or spring of a river which emptied its waters
“ into the River Canada. *The last mentioned River then*
“ *is described as the boundary on the north-east of the*
“ *Patent.*

“ The line of the Treaty is a line due north, in its course, and in its extent, reaching from the source of the St. Croix to the *highlands*; the line in Sir William Alexander's patent is an indefinite uncertain line, which is to leave, not the source, but the most western spring of the St. Croix, and wander to the unexplored spring or source of a river, which empties its waters into the St. Lawrence, and of the existence of which source or spring there was no evidence or knowledge, but what was conjectured from the existence of rivers, the mouths of which only had been seen. From the year 1621 there was no act of Government, no exercise of jurisdiction, or claim of property, from which this line could receive a station, but all was abandoned and lost in Treaties, cessions, conquests, requests, by and from the French crown, from Oliver Cromwell, and from the Kings of England.

“ The country of Canada was conquered in 1760; on the 7th October, 1763, the King of England issued His Royal Proclamation for improving and regulating the islands and country which had been ceded by the late Treaty of Peace. In this Proclamation we find this provision; first, ‘ The Government of Quebec bounded on the Labrador coast by the River St. John, and thence by a line drawn from the head of that river through the Lake St. John to the south end of the Lake Nepissim, from whence the said line crossing the River St. Lawrence, and the Lake Champlain in forty-five degrees of north latitude, passes along the highlands, which divide the rivers that empty themselves into the River St. Lawrence, from those which fall into the sea.’

“ *There is no such angle described in the Proclamation or in the Act of Parliament as is mentioned in the Treaty of 1783.* The line by the Proclamation is to cross the St. Lawrence in the 45th degree of north latitude, which is on a degree nearly equal with the mouth of the Scoudic and Magaguadavic Rivers, and very far south of the angle now sought for, and far below every part of the highlands referred to. No course or courses are given to the line which is drawn on the highlands, but all is left to imagination. This line could have no influence on the minds of the Commissioners in 1783.

“ In the Treaty of that date it is provided, that the line between the two nations shall run on the highlands to the north-westernmost head of Connecticut River, and then down the middle of that river to the 45th degree of north

"latitude ; whereas the line of the Proclamation was in the
 "45th degree at the St. Lawrence, and so to run on the
 "highlands to Lake Champlain, without saying at what
 "point it should cross the Connecticut.

"Thus we find *no place for this angle prior to the Treaty
 "of 1783, and are now left to form it by running the lines
 "in that Treaty agreed upon.*

"That in order to determine that place as nearly as could
 "be done, it was agreed that a certain river, which had
 "heretofore been known and called by the name of the
 "River St. Croix, and which had been deemed and received
 "as the eastern boundary of the Province of Massachusetts
 "Bay, should be taken as a part of the boundary, and that
 "to fix a line from the source of that river to the highlands
 "both as a line for the Government of Massachusetts and
 "Nova Scotia, it should run due north, and that *the limita-
 "tion of that line should be in what should ultimately be
 "found, when the country should be explored, to be the high-
 "lands.*

"This is not a singular instance in that Treaty of *leaving
 "that as uncertain which might afterwards be ascertained :*
 "the important boundary of the north-westernmost head of
 "Connecticut River is unknown and unexplored. There
 "are several other instances very similar to this which ap-
 "pear on reading the second article of the Treaty of Peace.

"We have come then *clearly to this point*, that the north-
 "west angle of Nova Scotia is *to be found* by running a line
 "due north from the source of the St. Croix River to the
 "highlands *to a point or a place, where that line shall inter-
 "sect a line along the highlands, which divide the rivers as
 "before mentioned, and run to the north-westernmost head
 "of Connecticut River.* * * * * *

"The Highlands had, in the year 1763, been made the
 "boundary of Quebec, or the Lower Canada boundary, *but
 "where the boundaries or highlands are, is yet resting on
 "the wing of imagination.* * * * * *

"We are as entire strangers to the Highlands, and the
 "sources of the Rivers on either side of them, as we are to
 "the sources of the Nile. *There can be no doubt that the
 "north west angle of Nova Scotia is yet to be formed, and
 "that this is to be done by forming the north-east angle of the
 "State of Massachusetts.* To do this it has become neces-
 "sary to find the River which was truly meant and intended

" by the Commissioners who described the bounds, to find
 " the source of that river, and to draw a line due north from
 " thence.

" But even this cannot decide where the northwest angle
 " is, because this board has no authority to fix the line, which
 " is to be intersected in order to form the angle, or the point
 " of inclination of the two. The question resulting from the
 " Treaty in regard to the line upon the Highlands is reserved
 " to a future period. This board has no concern in it as to
 " its principles or consequences, and *the point of the locality*
 " *of the north-west angle is to be the investigation of the*
 " *next century.*"

The framers of the Treaty wanted a point of departure for the northern boundary line of The United States; and they appear to have thought that the supposed point of contact of the three provinces falling to the south of the St. John, would, when named in the treaty, sufficiently answer that purpose. The northern boundary line, being intended to limit the territory of The United States on that side, was to be carried westward from the point of departure thus designated, which was necessarily external to the territory of The United States, then first to be acknowledged independent. The north-eastern angle of that territory it was strictly within the scope and competency of the Treaty, as it was also one of its particular objects, to describe. To describe the north-western angle, or any other angle, of Nova Scotia, was *not* within the Province of the Treaty; and it has already been shewn that no such angle existed, except in theory, prior to the conclusion of that instrument. When therefore, The United States object to Mars Hill that it is not, as they affirm, connected with a chain of Highlands extending to Chaleurs Bay, they exact a condition not only foreign to the declared and legitimate purpose of the Treaty, but also to the real question to be decided.

Such being the case, there would be little interest in examining the nature of the country east and north-east of Mars Hill. It is enough to know that Mars Hill is calculated to impart a character of decidedly superior elevation to that part of the country in which it is situated, that the due north line crosses its eastern slope, and that there are appearances of a generally hilly and mountainous tract, marked with occasional eminences of a loftier kind, going off from it in a westerly or south-westerly direction, and allowing the boundary line to be carried along this uneven succession of highlands in such a manner as to leave the waters of the

Atlantic Rivers entirely within The United States' territory.

According to the American argument the only spot on the due north line, capable of answering to the terms of the Treaty so as to constitute the point of departure required for the Northern Boundary Line, is fixed at a point about 144 miles from the source of the River St Croix. The line so prolonged intersects the main channel of the St. John and several of its tributary streams, besides intersecting also several other streams whose confluence form the River Restigouche; and it terminates at a place destitute of any marked elevation, between one of the branches of the Restigouche and the sources of a stream falling into the River St. Lawrence, and presumed to be the River Metis.

According to the same argument the Northern Boundary of The United States is carried from the point thus fixed to the north-westernmost head of Connecticut River, passing all along between the Rivers that empty themselves into the River St. Lawrence and the tributary streams of the River *Restigouche*, of the River *St. John*, and of Rivers which fall into the *Atlantic Ocean*.

The highlands, which the American argument describes as passing, without interruption, from the point proposed by The United States as the true north-west angle of Nova Scotia to the north-westernmost head of Connecticut River, are wholly destitute of any marked or conspicuous elevation through, by far, the greater part of their extent.

The United States, pursuing their idea of identifying the line designated in the Treaty with that which they suppose to have existed previously among the British Provinces, have objected to the adoption of Mars Hill, as the point of departure for the northern boundary line, that it is not in immediate connection with any chain of highlands trending eastward in the direction of Chaleurs Bay. The reasons which lead to treating this objection as irrelevant have been stated above, and it is not thought necessary to go into the examination of a fact, which, if it were even established on indisputable authority, would be entitled to no weight in the decision of the point at issue. But since The United States appear to think that the continuation of the highlands eastward of the due north line is so essential to a fulfilment of the terms of the Treaty, there may be some interest in ascertaining how far the line which they themselves claim, is calculated to fulfil this condition. The line which they claim is, in fact, no other than the boundary line which they

suppose to have existed as between Canada and Nova Scotia in virtue of the Royal Proclamation of 1763. But that line, it is well known, cannot continue along the highlands according to the condition on which The United States insist. It must leave those highlands, in order to pass along the north coast of the Bay de Chaleurs. In this manner it is evident that whatever may be the character of the country in a direct line between Mars Hill and Chaleurs Bay, the line claimed by the United States is defective in that very quality to which they attach so great a degree of importance.

It has already been shewn and fully established that the River *Restigouche* and the River *St. John* are not classed by the Treaty among the Rivers falling into the Atlantic Ocean, and consequently that The United States, who maintain that the Highlands designated by the Treaty must be those which *immediately* divide the St. Lawrence Rivers from those of the Atlantic Ocean have failed to substantiate their claim in that respect. The consequences involved in the admission of that claim, as well with regard to the general principle and purview of the Treaty, as relatively to many important interests of the British Colonies, which would be thereby prejudiced, without the extension of any corresponding benefit to The United States, are such as to call for the clearest proofs and the most irresistible demonstration. But far from this being the case in the present instance, it is manifest, that in order to produce even an appearance of consistency between the American Claim and the letter of the Treaty, one of the principal limitations of that Treaty must be wholly set aside, and even its very terms submitted to a forced and unnatural construction, directly opposed to the sense which is incontrovertibly attached to them in other parts of the same Article.

That the Bay of Fundy and the Atlantic Ocean are contradistinguished from each other and confounded together in one and the same Article of the Treaty; that the River St. John which empties itself into the Bay of Fundy, and the River *Restigouche* which empties itself into the Bay of Chaleurs and through it communicates with the Gulf of St. Lawrence, fall into the Atlantic Ocean in the sense and meaning of the Treaty; that the word "Highlands" is wholly unconnected with the idea of height otherwise than as it represents the separation of rivers; that the British Plenipotentiary, after declining the offer of the St. John as a Boundary, consented to give up half of that River together with a large territory north as well as south of it to The United

States; that the principle, declared in the Treaty, of securing perpetual harmony and beneficial intercourse between the two parties, would receive its intended application by dividing the principal rivers of the Highland Country in such manner as to lay the seeds of "future discord" between the Parties; are among the propositions in virtue of which the claim of The United States can alone be made good in opposition to that of Great Britain.

The United States, in supporting that claim, have laboured to establish not only that the Boundary Line designated in the Treaty is identical with that which subsisted between the British Provinces of Nova Scotia, Quebec and Massachusetts, previous to the War of Independence; but further, that the Line, which they now propose, is identical with the one and with the other of these two Lines. It has already been proved in treating of that point which The United States have claimed as the true north-west angle of Nova Scotia, that any such identity between their line, and the supposed line of the ancient provincial boundaries, is mere matter of conjecture. In going into this question of the ancient Boundaries, The United States have not been able to conceal the inconvenience, and indeed the insurmountable objections attached to such a discussion at the distance of forty-six years from the conclusion of the Treaty. It was, in truth, so clearly the intention of the Treaty to settle the Boundaries both peremptorily and definitely, that the argument advanced by The United States with reference to what those Boundaries were, as between the several British Colonies before the War of Independence, must be considered as tending, however undesignedly, to counteract that wise and salutary intention. The treaty itself, as amply shewn before, is silent on this subject. It introduces the definition of the Boundaries by stating it to be "*agreed and declared*" that they "*are and shall be*" as follows. Such are not the words which parties meaning to confirm ancient boundaries would have chosen. If the framers of the Treaty had intended to adopt any line of demarcation supposed previously to exist, they might have satisfied themselves with running a line due north from the St. Croix River to the Southern Boundary of the Province of Quebec; but they were resolved not to trust to any such vague and arbitrary line of Frontier, but to establish peremptorily a new line, which, whether it might or might not coincide with any supposed former line, should, in accordance with the principle laid down in the beginning of the second article of the Treaty,

prevent all disputes in future on the subject of the Boundaries of The United States.

In maintaining the fact of the silence of the Treaty as to ancient Boundaries, and considering that question as foreclosed by the authoritative decision contained in its Second Article, there is no intention of asserting on the part of Great Britain that no reference whatever was made to the ancient Boundaries in the course of the negotiations which terminated in the Peace of 1783. There is no difficulty in admitting that the American proposal, as to Boundaries, which was subsequently transferred with several important alterations to the Treaty, derived the greater portion of its terms from the Royal Proclamation of 1763. The correspondence of the American Commissioners further shews that, at least, on their part, the Charter of Massachusetts was brought forward at some period of the negotiation in support of their pretensions. It does not indeed accord with the situation of the parties, at that time to suppose that The United States could ever have thought seriously of insisting on the acknowledgment, by Great Britain, of a wider extent of territory than they were understood to have possessed, in virtue of some principle or other, as British Colonies.

But these admissions are perfectly consistent with what has been already asserted on clear specific evidence, namely, that the two parties, in proceeding to a final adjustment of their claims, did not agree to decide those claims, on any fixed principle of right, but ultimately determined to adjust them by a peremptory declaration founded on mutual consent and mutual convenience, and the interest, common to both, of preventing future disputes and collision.

A brief review of the principal documents which relate to the ancient boundaries in this quarter, will indeed be sufficient to shew that the negotiations might have been protracted to an indefinite period, if those who conducted them had not taken the determination of adjusting their differences on the only principle adapted to their real interests, and to the new position in which the parties were placed towards each other.

Sir William Alexander's Grant, which was not in the recollection of either Mr. Adams or Mr. Jay when they were examined on oath as witnesses under the St. Croix Commission, and which in former discussions respecting boundary under the Treaty of 1783, The United States' Agents have vehemently rejected, carries the western Boundary of Nova Scotia up to the westernmost source of St. Croix River,

and thence to the River St. Lawrence by a line extending *towards* the north, and joining the *nearest* spring or head stream emptying into that River. According to the same Grant, the northern boundary of Nova Scotia was to pass along the southern coast of the River St. Lawrence to Cape Rosiers.

The terms of the Grant would not bear us out in supposing that the western Boundary of Nova Scotia was to be formed by a *due north* line. The only positive circumstances to be collected from them as guides for our opinion are, that the Line between the two sources specified therein shall be a straight one; and that the source communicating with the St. Lawrence shall be the nearest. On looking to the map we instantly perceive that these guides might lead us to head waters of the River Chaudiere as being the nearest to the point of departure of all the sources north of it falling into the St. Lawrence. But, without presuming to intimate that such was the real intention of the Grant, dating, as it does, from a period when the face of the country was wholly unknown, we feel ourselves justified in pointing out the vagueness of its terms, and inferring how extremely difficult, or rather impossible, it would have been for the Negotiators of the Treaty to have fixed the Boundaries between two Independent States, in conformity with definitions so loosely worded as to involve the most unexpected contingencies.

A line extending from the source of the St. Croix "*towards* the north" to the *nearest* part of the St. Lawrence would, at all events, strike that river, owing to the obliquity of its source, far to the west of that point where a *due north* line would intersect it. A reference to the map will make this clear. It must not be forgotten that the Commissioners under the 5th Article of the Treaty of 1794, in deciding which was the true St. Croix, adopted the *northern* stream, to the exclusion of the *western*. Thus the variations of this one Grant alone offer four several north-west angles of Nova Scotia. The western stream being the one named in Sir William Alexander's Grant, the preference of the northern stream must surely invalidate the authority of the Grant as a *binding* designation of the boundary of Nova Scotia; and at any period subsequent to the Proclamation of 1763, Sir William Alexander's Grant is altogether irrelevant as to the northern boundary of that Province.

The Charter of Massachusetts, dated in 1691, does not mention the *territory* of Sagadahock, which according to

the Duke of York's Grant extended by its eastern and western limits to the River St. Lawrence. It annexes to the Province of Massachusetts only "those lands and hereditaments lying and extending between the said country or territory of Nova Scotia and the *said river Sagadahock*." Agreeably to these words, the northern limit of Sagadahock, as annexed to Massachusetts, would be a line drawn obliquely from the source of the Sagadahock or Kennebec River to the point of intersection between the western boundary of Nova Scotia and the south bank of the River St. Lawrence. Besides the considerations arising out of this circumstance, it is to be remembered that the right of Massachusetts to retain any part of Sagadahock, at least that part of it which lies east of the Penobscot River, has been continually questioned and denied by the British Government.

The Royal Proclamation of 1763, of which the Act of Parliament called the Quebec Act is a mere paraphrase as to that part of the boundary still in dispute, extended the limits of Canada considerably to the south of the St. Lawrence. According to that Proclamation, the northern boundary of Nova Scotia, regulated by the southern boundary of Canada, would agree with the following description: "the line crossing the River St. Lawrence and the Lake Champlain in 45° North Latitude passes along the highlands which divide the rivers that empty themselves into the said River St. Lawrence from those which fall into the Sea, *and also* along the north coast of the Bay des Chaleurs." To the line thus described the American argument has attributed a degree of precision and unbroken continuity, which its application to the known circumstances of the country does not warrant. A line, of which the conditions are that it pass along the highlands, as traced by The United States on the principle of a supposed identity between the line now claimed by them and the ancient boundary line of the Provinces, and also that it pass along the north coast of the Bay des Chaleurs, cannot possibly be continuous "from its beginning to its termination." The American line prolonged in an easterly direction would extend to Cape Rosiers, leaving an interval of more than half a degree between its own course and the north coast of Chaleurs Bay; and supposing the line to be carried along the coast of Chaleurs Bay, agreeably to the terms of the Proclamation, a considerable part of it must necessarily pass, before it reaches that bay, not between rivers falling on one side into the St. Lawrence and on the other into the Sea, but between the streams which fall into

the Bay of Chaleurs only, and in a direction nearly at right angles with the direction of the line prolonged to Cape Rosiers. *The truth is that the line described in the Proclamation was never put to the test of a practical application*; nor did the circumstances of the country require that it should receive a more fixed and positive character throughout that central portion which intervenes from the Bay des Chaleurs to the dividing highlands situated immediately between the sources of the Kennebec and Chaudiere Rivers. On the Bay des Chaleurs there were settlements connected with the fisheries; at the other extremity of the line settlements were also to be found; and it was therefore desirable to provide for an actual delimitation relative to the rights of provincial jurisdiction in both those parts of the country. But the intermediate space was a wilderness destitute of all inhabitants except the Indians; and the British Government had therefore no adequate motive for regulating the boundaries of provincial authority throughout a region so little known at that time, and of which the interests were not as yet even partially developed.

Moreover, The United States cannot, with any pretence of right or reason, appeal either to the Proclamation or to the Quebec Act. The American Congress, when engaged in weighing the conditions of Peace, reprobated both the one and the other, as acts of oppression trenching on their rights, and to be reckoned amongst the causes of their Revolution.

Such are the vague and conflicting documents, by means of which The United States have endeavoured to establish their two-fold proposition which forms the basis of their whole argument, namely, that the boundary defined in the Treaty, was intended by the negotiators to be identical with that which they conjecture to have existed previously as between the British Provinces, and that the line now claimed by them, is identical with those two lines. In other words they have attempted an impossibility by means of a discussion which they acknowledge to have been definitely closed by the Treaty of 1783, and of which the records of the negotiation and the Treaty itself offer no traces to warrant their conclusion, that the confirmation of a pre-existing boundary line was the object and intention of the Article respecting boundaries. The attempt to establish this proposition is termed an impossibility, because it has been proved in the course of this inquiry, that no such line did, in fact, exist before the Treaty of 1783, in the sense presumed by their argument; that the identical line now claimed by them could not possibly coincide with that line, if it had really

existed, and that the documents, which they have produced in support of their pretensions, are unfit, either singly or collectively, to furnish the basis necessary for its establishment.

There are two points which still remain to be noticed.

It has been alleged on the part of The United States, that all maps, comprehending the disputed territory, which are known to have been published between the periods of 1763 and 1783, and of which copies are now to be procured, concur in carrying the boundary line, as described in the Royal Proclamation, along those highlands to which the claim of The United States particularly applies. In answer to the inference, which The United States have drawn from this supposed coincidence, it is to be observed :

1°. That in the maps referred to, the highlands in question are represented by a line of visible elevation contrary to the true character of the country, as since ascertained.

2°. That in some of these maps the line of visible elevation, so represented, is made to intersect the waters, either of the St. John, or of the St. Lawrence, and in some, even of both, disproving thereby any intention of its having been traced upon the principle of separating those waters.

3°. That, notwithstanding some differences of little consequence, when taken with reference to general purposes, these maps are so evidently copied, the one from the other, that no additional evidence can be safely derived from their coincidence.

4°. That the selection, on the part of the negotiators, of Mitchell's map, which was published before the Proclamation of 1763, in preference to those maps which pretend to give the line described in the Proclamation, contributes materially to show, that the line in question was not that on which the boundary, as defined in the Treaty, was meant to be established.

The point remaining to be noticed is the state of actual possession and jurisdiction in the disputed Territory, and on this point a series of important facts and documents will be presented.

There is on the public records at Quebec, a Grant or concession from the French Government of Canada, to a French subject, of a territory called **THE FIEF OF MADAWASKA**, dated on the 25th of November, 1683, eight years prior to the date of the Massachusetts Charter, which forms the basis of the American claim. This **FIEF OF MADAWASKA** includes the whole of the *Temisquata Lake* and nine miles further in length down the *Madawaska River*, extending in depth six miles for the whole distance, as well around the Lake as on

each side of the River. There are also on record at Quebec, deeds, judicial proceedings, and acts of feudal service, by which the title to this Territory is regularly deduced from the original grantee downwards to the present time; and possession and actual occupation of this extensive Fief continue to be held to this day *under the original grant, and under the jurisdiction of Lower Canada.**

In the Quebec Gazette of the 24th January, 1765, there is a notice issued from the office of the Provincial Secretary of that Province, by which all Canadian inhabitants are prohibited from interfering with the hunting grounds of the Indians, "*down to the Great Falls of the River St. John.*" This is an act of clear jurisdiction by the Government of Quebec down to the place mentioned in the notice, viz: *the Great Falls of the River St. John*; and such a jurisdiction could not have been exercised had not the place have been deemed to be within the limits of the Province of Quebec, according to the bounds described in the then recent Proclamation of 1763.

In the month of November, 1784, *Charles Nichau Noiste*, a native Indian, was tried and convicted in the Court of King's Bench at Quebec, for the murder of one Archibald McNeil, *at Madawaska*. The place where the offence was committed is thus described in the Indictment, "near unto the village of Madawaska, in the district of Quebec, in the Province of Quebec."—In the Quebec Gazette of the 11th of November, 1784, there is an account of the execution of this Indian for this murder; and the case is rendered

* The following is a list of documents on record either in the Government Offices or offices of Notaries Public at Quebec, all of them including THE FIEF OF MADAWASKA:—

1. Concession of the Fief of Madawaska to the children of the Sieur de la Chenaye, 25th November, 1683.
2. Adjudication of the Fiefs of Riviere du Loup and Madawaska to Joseph Blondeau dit la Franchise, 29th Oct. 1709.
3. Act of *Foi et Homage* by Joseph Blondeau dit la Franchise for the Fiefs of Riviere du Loup and Madawaska, 15th February, 1723.
4. *Acquiescement* by Joseph Blondeau dit la Franchise, 15th Feb. 1723.
5. Adjudication of the Fiefs of Riviere du Loup and Madawaska to Pierre Claverie, 29th July, 1755.
6. Act of *Foi et Homage* by Pierre Claverie for the Fiefs of Riviere du Loup and Madawaska, 19th March, 1756.
7. Receipt for the domains and dues for the Fiefs of Riviere du Loup and Madawaska, 8th May, 1756.
8. Deed of Sale, J. A. N. Daudaune Danseville and his wife (the widow of Pierre Claverie) to James Murray, 29th July, 1763.
9. Deed of Assignment dated 2d August, 1768, by Richard Murray to Malcolm Fraser of an Indenture of lease made by James Murray to the said Richard Murray and Malcolm Fraser.—And an Indenture of Lease by the said James Murray to Henry Caldwell, dated 7th April, 1774.
10. Lease from Henry Caldwell to Malcolm Fraser, 24th September, 1782.
11. Confirmation before a Notary, 27th December, 1786, of Lease from Henry Caldwell to Malcolm Fraser, 24th September, 1782.
12. Deed of Sale from the Trustees and Executors of James Murray, to Henry Caldwell, 21st June, 1802.
13. Deed of Sale by Henry Caldwell, to Alexander Fraser, 2d August, 1802.

remarkable by a commutation of the mode of executing the sentence of death, ordered by the Governor, under the advice of Council, as appears by the following extract from the minutes of the Executive Council :—

" On Wednesday the 3d November, 1784, at the Council Chamber, in the
" Castle of St. Lewis.

PRESENT :

" His Excellency FREDERICK HALDIMAND, Governor.

" The Hon. HENRY HAMILTON, Lieutenant Governor.

" Hugh Finlay,

Adam Mabane,

" Thomas Dunn,

George Pownall,

" Francois Levesque,

J. G. C. De Lery,

" Edward Harrison,

Henry Caldwell,

" John Collins,

Francis Baby, Esquires.

" His Excellency, the Governor, laid before the Council
" a sentence pronounced this day against an Indian named
" Charles Nichau Noiste, indicted for murder, condemning
" the said Charles Nichau Noiste to be hanged by the neck
" until he be dead ; and stated that application had been
" made to his Excellency by the friends and relations of the
" culprit, the Indians of his nation, and the Indians of other
" nations, to change the punishment pronounced by the law,
" into that of shooting, which is more consonant to the ideas
" of savages, and having requested the advice of the Council,
" how far His Excellency ought to extend mercy in the
" change of punishment so earnestly prayed for ;—The Coun-
" cil, having weighed the matter, and the consequences that
" might ensue, were of opinion unanimously, that the pu-
" nishment should be changed, and that the said Charles
" Nichau Noiste should be shot, in place of being hanged, as
" is directed by this sentence."

The Province of Quebec continued to claim, and in some instances to exercise jurisdiction down to the Great Falls of the River Saint John, until the year 1792, as will appear from the following documents :—

1. Proceedings in the Court of Common Pleas at Quebec.

" Province du Bas Canada, }

" District de Quebec. }

" COUR DES PLAIDOYERS COMMUNS.

" Terme de Septembre,

" Lundi, 14 Septembre, 1789.

" Présent,

ADAM MABANE, }
PIERRE PANET, } Ecuiers.

" Anselme & Michael Robichaux, }

" Augustin Dube & Pierre Dupere, }
" de Madouaska. }

" Le Sheriff fait son retour du service de la sommation, M^{re}. Panet paroit
" pour les demandeurs, et a filé trois Licences et une Lettre citée dans sa de-
" claration, M^{re}. Cugnet, comparoit pour les défendeurs, la Cour ordonne,

" que le Défendeur prendra communication des pièces filées par le demandeur
 " et fournira ses défenses sous trois jours.

" 17 Septembre, 1789.

" M^{re}. Cugnet, pour les défendeurs a filé ses défenses, la Cour ordonne,
 " que le demandeur en prendra communication et fournira ses répliques sous
 " trois jours.

" 28 Septembre, 1789.

" M^{re}. Panet pour les demandeurs a filé ses répliques, la Cour ordonne
 " que le défendeur en prendra communication.

" 30 Septembre, 1789.

" La Cour du consentement des parties a mis en délibéré.
 " La Cour, en procédant au délibéré de cette cause, ayant remarqué, que les
 " défendeurs ont allégué dans leurs écrit de défenses, qu'il ne sont pas de la juris-
 " diction de cette Cour, mais domiciliés de la Province de Brunswick, auquel
 " allégué les demandeurs n'ont pas répondu dans leurs écrit de répliques, ordonne,
 " que les demandeurs déclareront et feront inscrire sur le registre de cette Cour,
 " s'ils admettent l'allégué des défendeurs ou non.

" 9 Janvier, 1790.

" M^{re}. Panet, Avocat des demandeurs, a déclaré, en conformité du jugement
 " de cette Cour du quatre Janvier der. qu'ils soutiennent, que les défendeurs ont
 " été assignés dans la Province de Quebec, et que l'assignation est suffisante de
 " laquelle déclaration cette Cour a donné acte, et a fixé à Lundi pour entendre la
 " cause.

" 11 Janvier, 1790.

" Après avoir entendu les parties, la Cour ordonne qu'elles seront prévenues res-
 " pective Vendredi prochain, si Madouaska et le Grand Saül sont dans la Pro-
 " vince de Quebec ou non.

" 14 Janvier, 1790.

" Sur la motion de M^{re}. Panet la Cour ordonne, que les preuves seront
 " peremptoirement entendues et reçues Vendredi prochain.

" 18 Janvier, 1790.

" M^{re}. Panet a dit, qu'il n'a d'autre preuve à produire en conformité du Juge-
 " ment du onze de ce mois, que les licences des demandeurs filées, et la règle du
 " 14 Septembre, pour fournir les défenses, M^{re}. Cugnet demande jusqu'au terme
 " prochain pour faire preuve, de son allégué en ses défenses : la Cour parties
 " ouïes mets en délibéré.

" 22 Mars, 1790.

" La Cour ayant considéré les Plaidoyers des parties, et après en avoir
 " délibéré, est d'opinion que les défendeurs ne se sont pas conformés à l'article
 " onzième des règles de cette Cour, ayant du lors du jour de retour des som-
 " mations filé leur exceptions, soit peremptoires, delatoires ou declinatoires,
 " que le même jour, auquel Mr. Cugnet, leurs Avocat filat sa comparaison il
 " fut ordonné, qu'il fourniroit ses défenses et non un écrit intitulé mal à propos,
 " défenses, qui cependant est une exception declinatoire, que les défendeurs
 " n'ayant aucunement prouvé ainsi qu'il lui étoit permis, de le faire par le
 " jugement interlocutoire de cette Cour, que les assignations à eux données
 " ont été signifiées hors de la juridiction de cette dite Cour, ils ont été forclos
 " d'après ces considérations, la Cour deboute les défendeurs de leurs exception
 " declinatoire qu'ils ont qualifiée defenses avec depens occasionnés par la dite
 " exception, et ordonne qu'ils fourniront leurs defenses au mérite de la cause
 " sous trois jours."

2. Extract from the Quebec Gazette, of 10th November,
 1791, of a Sheriff's Notice of the Sale of Lands of Pierre
 Dupere, at Madawaska, at the suit of Anselme and
 Michel Robichaud.

" District of Quebec,

" By virtue of a Writ of Execution issued out of His Majesty's Court of
 " Common Pleas for the said District, at the suit of Anselme and Michel

" Robichaud, merchants, residing at *Rivières des Capse*, against the moveable
 " and immoveable property of *Augustin Dubé*, heretofore of *Madouaska*, now
 " of *Isle Verte*, and *Pierre Duperé*, merchant at *Madouaska*, to me directed,
 " I have seized and taken in execution—

" I. A piece of land of two arpents and two perches in front, by forty-two
 " arpents in depth, situate in the Parish of St. John, in the Seigniory of Isle
 " Verte, bounded in front by the River St. Lawrence, and behind by the lands
 " of the said Seigniory, joining on the south-west side to Mr. Lecour the Pilot,
 " and on the north-east side to the heirs of Kioux, the same belonging to the
 " said Augustine Dubé, one of the defendants.

" II. A piece of land belonging to the said Pierre Duperé, the other defend-
 " ant, containing six arpents in front on the River St. John, at *Madouaska*, by
 " a league in depth, ending at the ungranted lands, joining on the north-east
 " side to François Albert, and on the south-west side to ungranted lands; to-
 " gether with an old house thatched with straw, 15 feet by 30, a store house
 " of cedar logs, roofed with bark, 18 feet by 30, with arable land for sowing
 " three bushels and a half of grain. Now I do hereby give notice, that the
 " first mentioned piece of land will be sold and adjudged to the highest bidder,
 " at the church-door of the said Parish of St. John, on Thursday, the fifteenth
 " day of December next, at eleven o'clock in the forenoon, and the second
 " piece above described situate at *Madouaska*, will also be sold and adjudged to
 " the highest bidder, at the door of the House or Chapel where the inhabitants
 " meet for Divine Service at *Madouaska*, aforesaid, on Friday the sixteenth day
 " of December next, at eleven o'clock in the forenoon, at which respective times
 " and places, the conditions of sale will be made known by

" J. A. SHEPHERD, Sheriff.

" All persons having claims on the above described premises, by mortgage
 " or otherwise, are hereby requested to give notice thereof to the said Sheriff,
 " at his Office in Quebec, before the day of sale.

" Quebec, 10th August, 1791."

3. Extract from the Minutes of the Executive Council of the Province of Quebec, relative to the Temisquata Road, 7th July, 1785.

" Thursday, 7th July, 1785.

" At the Council Chamber in the Bishop's Palace ;

PRESENT :

" The Honorable HENRY HAMILTON, Esquire, Lieutenant Governor and
 " Commander-in-Chief,

" Hugh Finlay,	Henry Caldwell,
" Edward Harrison,	Francis Esby,
" Adam Mabane,	Samuel Holland, Esquires.
" J. G. C. De Lery,	

" The Council resumed the consideration of the Post Master General's
 " proposition relative to the Road from *Kamouraska* to *Lake Temisquata*, and
 " having examined Mr. Danbourgess's Report of the expense of carrying this
 " plan into execution, which exceeds considerably the calculations formerly
 " made by Messrs. Finlay and Collins, were of opinion, that the whole should
 " be as soon as possible transmitted to His Majesty's Secretary of State, that
 " his Majesty's pleasure may be known thereon ; and, in the mean time, that
 " Mr. Danbourgess should be directed to proceed with the fifty men already
 " employed by him on this service ; that wood should be cut in the proper season
 " for building the bridge over the River du Loup, and the necessary prepara-
 " tions made for opening the communication agreeable to the plan proposed : from
 " which the Council were of opinion, many advantages are to be expected to this
 " Province as well as *Nova Scotia* and *New Brunswick*, particularly in time of
 " war, when an easy and speedy communication, independent of the States of
 " America, becomes absolutely necessary ; and when in times of peace, from the
 " inconvenience of sending Government and other despatches by way of *New*
 " York, which is every day more apparent, the American Post-Master having

"lately refused the Post-Master-General here to allow the couriers from this Province to pass through their territories, insisting that all letters shall go by their mails only, which can never be complied with by us.

"Ordered, That copies of this minute be transmitted to the Governors of Nova Scotia and New Brunswick."

4. *Extract from the Minutes of the Executive Council of the Province of Quebec, 9th July, 1787.*

"MONDAY, 9th July, 1787.

PRESENT :

"His Excellency the Right Honourable GUY, Lord DORCHESTER, Governor.

"The Honourable HENRY HOPE, Esquire, Lieut.-Governor.

"William Smyth, C. J.

Le Comte Dupré,

"Hugh Finlay,

Edward Harrison,

"George Pownall,

J. G. C. De Lery,

"Henry Caldwell,

William Grant,

"P. R. De St. Ours,

Francis Baby, Esquires.

"His Lordship intimated the propriety of ascertaining the limits between this and the province of New Brunswick, and that the Surveyor-General of that Province would soon meet Mr. Holland for that purpose; and as it was absolutely requisite towards opening and sustaining the land communication between the two Provinces, that the lands on both sides of it should be settled, his Lordship proposed, and the Council concurred in authorizing Mr. Holland to give assurances to all persons desirous to settle there, and especially the Acadians in that vicinity, of the favourable intention of this Government to issue grants in their favour for three hundred acres to the head of every family, out of the waste lands of the Crown in that quarter; and it is for that purpose recommended to them to explore the places fit for cultivation on both sides of the route, and apply, by petition, in the usual course, for grants to be made, agreeable to the Royal Instructions."

5. *Report of the Committee of Council appointed to consider the Boundary between the Provinces of Quebec and New-Brunswick, and the means of encouraging the communication, and settle the lands in that vicinity.*

"To his Excellency the Right Honourable Guy, Lord Dorchester, Captain-General and Governor in Chief of the Provinces of Quebec, Nova Scotia and New Brunswick, &c. &c. &c.

"The Committee of Council appointed to report as well upon the Question of the Boundary between this Province and that of New Brunswick, as the most eligible means of encouraging the communication and the settlement of lands in that vicinity, have the honour to observe, that Mr. Holland's Report to your Excellency has been duly considered by the Committee, who likewise paid thorough attention to the description of the Boundaries of the Provinces of Quebec and New Brunswick, as extracted from your Excellency's Commissions as Captain-General and Governor in Chief, and on the whole they beg leave to remark, that if the Province of New Brunswick may of right claim the sources of rivers that take their rise on the height of Land which divides the Rivers that empty themselves into the St. Lawrence from those which fall into the Atlantic Ocean, the ancient limits of this Government will be curtailed towards New Brunswick, and Seigniories under Canadian Grants as far back as the years 1623 and 1688, be taken into that Province; besides, the Acadians already settled above the Great Fall of Saint John's River, and such people as may chuse hereafter to settle there, would be greatly incommoded if those parts should be included in the Province of New Brunswick. Their commercial dealings will be with this country, for they must, from their situation, be supplied with European and West India commodities from Quebec.

" The Committee most humbly submit to your Lordship, whether it would not be for the advantage of both Governments *that the Province of Quebec be separated from that of New Brunswick by a line running along the high-lands which extend from the head of Chaleurs Bay to the foot of the Great Fall of St. John's River, and from thence crossing the River (so as to include the whole of the portage or carrying place) and continuing in a straight line towards the sources of the River Chaudiere, which rise on the highlands that commence at the said head of the Bay of Chaleurs, and extend all the way to the north-westernmost head of Connecticut River.*

" With regard to settling the new road to Lake Timiscouata, along that lake and so down the Madawaska, the Committee beg leave to represent that the soil in that lengthy tract is poor in general; yet there's many parts through its whole extent fit for cultivation, though not of a quality to induce people to settle so far removed from assistance in their country labours, without good encouragement.

" From information the Committee report, that some Canadian Settlers may be had on the following terms:

" To obtain a grant of two hundred acres of land, free from quit-rent, for twenty years, paying a *sol de cens*.

" To have four acres cleared and a log-house built thereon, consisting of two apartments, and to have an out-house of logs to serve as a stable and barn, with three years provisions for each family.

" The Committee have further been informed that Loyalists will set down on that tract on the following conditions:

" That each family have a grant of land (200 acres), free from quit-rent for ten years.

" Twenty-five pounds to be advanced, to stock the farm; the lands and improvements to be security that the money shall be repaid in ten years, but without interest. That each family be conveyed to the land allotted to them with baggage, &c. To have two years' provisions allowed them, and delivered at their settlements.

" The lands from the mouth of Madawaska down to the Great Fall on St. John's River are of a superior quality; it is therefore presumed that Settlers would sit down in that part on less encouragement than is above demanded.

" By order of the Committee,

(Signed)

HUGH FINLAY, Chairman.

" Council Chamber, 18th October, 1787.

6. Judgment of the Court of Common Pleas at Quebec.

" District de } P. L. Panet, }
" Quebec. } Greffr. }

" GEORGE TROIS, par la Grâce de Dieu, Roi de la Grande Bretagne, de France, et d'Irlande, Defendeur de la Foy, &c. Vu que Anselme et Michel Robichaud, de la Rivière de Caps a obtenu jugement le seizieme jour de Décembre dernier, dans la Cour des Plaidoyers Communs, pour le District susdit, devant les Juges susnommés, à la Chambre d'Audience de la dite Cour, dans la Ville de Québec, contre François Albert, habitant de Madawaska dans le District, pour la somme de dix livres sterling, pour sa dette, ainsi que celle de treize chelines deux sols courant, pour ses fraix, et qu'il reste à faire exécution du dit jugement. Il vous est ordonné de prelever la dite somme et les fraix sus dits des biens mobiliers et effets du dit François Albert dans le sus dit District, excepté toujours les animaux de charue, outils et instruments d'agriculture, outils pour l'exercice du metier, et un lit garni; mais au cas que les autres biens mobiliers et effets du dit François Albert ne suffisent pas, les dits animaux de charue, instruments et outils d'agriculture, et outils de metiers, seront vendus (mais non le lit garni) huit jours après avoir fait afficher ou crier la vente, au Dimanche, à la Porte de l'Eglise paroissiale, immédiatement après le service divin, et ayez l'argent (ou deniers provenant de la vente) Vendredi le vingt-septieme jour d'Avril prochain, afin de le livrer au dit Anselme Robichaud et Michel Robichaud, pour sa dette et ses

" frais, avec un chelin pour ce precept, et quatre chelins pour vos droits hono-
 " raires ; et au cas qu'il vous reste quelques deniers entre les mains après que
 " vous aurez pleinement satisfait le susdit jugement et les fraix, vous rendrai
 " le surplus au dit François Albert. Témoin l'Honorable Jenkin Williams
 " l'un des Juges de Notre Cour à Quebec, le 15 Jour de Fevrier, dans le 33me
 " année de notre régné. (1743)
 (Signé)

J. WILLIAMS, J. P. C.

" A. Antoine Cureux Saint Germain, Capitaine, et autres Officiers de Milice
 " de la Paroisse de Kamouraska, et François Cires, Capitaine et Jacques Cir,
 " Lieutenant de Milice de la Paroisse de Madawaska."

7. Report of the Solicitor-General and Surveyor-General.

" To His Excellency Alured Clarke, Esquire, Lieutenant-Governor and Com-
 " mander-in-Chief of the Province of Lower Canada, Major-General, Com-
 " manding His Majesty's Forces in North America, &c. &c. &c."

" Report of His Majesty's Solicitor-General and Surveyor-General, under
 " Your Excellency's Reference of the 18th of June, upon the Petition of An-
 " selme and Michel Robichaud, of the Rivière des Caps, in the County of
 " Cornwallis, merchants, for a verification of the facts therein stated.

" May it please your Excellency,

" The Petition states, that for upwards of fifteen years they have traded
 " with the inhabitants of Madawaska, and under divers licences from the Dis-
 " trict of Quebec, have also traded with the Savages upon the frontiers, and
 " even with parts of the Province of New-Brunswick, and have purchased a
 " farm at Madawaska, and made considerable credits.

" That the Government of Quebec having for many years established Militia
 " at Madawaska, and the Court of Common Pleas for the District of Quebec
 " having pronounced several judgments, and issued executions in their favour
 " against persons settled at Madawaska, they had entertained hopes that justice
 " would be done them ; but that in the beginning of May last, one Thomas
 " Costin, calling himself a Justice of the Peace for the Province of New-
 " Brunswick, had caused new officers of the Militia to be elected at Madawaska,
 " by a majority of voices, at an assembly of the inhabitants, and imposed a fine
 " on Anselme Robichaud, one of the petitioners, for having caused the goods
 " of one François Albert, at Madawaska, to be seized, though such seizure was
 " made by virtue of an execution issued upon a judgment in the District of
 " Quebec. Moreover, that Jacques Cir, Lieutenant of Militia, established by
 " the Government of Quebec, though vested with the execution, was arrested
 " and made prisoner by a serjeant and four soldiers in His Majesty's troops,
 " who conducted him fifteen leagues, to a place called the Grand Sault, where
 " he was compelled to pay ten pounds and thirteen shillings to obtain his
 " liberty.

" The petition further states, " that as the petitioners have not been able to
 " learn from the Field Officers of Militia at Quebec, nor from John Collins, Esq.
 " the Deputy Surveyor-General, nor from the said Thomas Costin, who calls
 " himself a Justice of the Peace, where the Boundaries of the Province may have
 " been placed upon the line, designated by the statute of the 14th of His Majes-
 " ty, and how the change of Government may operate, and to the end
 " that they may obtain justice in one or other of the Provinces, they
 " most humbly pray your Excellency to cause them to be informed, if it be
 " possible, of the Boundaries of the Province of Lower Canada, and to take such
 " measures with the Government of New-Brunswick as your wisdom may
 " suggest, to prevent the ruin of the Petitioners and others, His Majesty's
 " faithful subjects, which their ignorance of the limits and such fines and force
 " may occasion."

" To verify the facts above alleged, it was our intention to examine the pe-
 " titioners, and such witnesses as they might be able to adduce before us, and
 " for that purpose the Solicitor General acquainted Colonel Baby thereof, but
 " from the distance of their residence from Quebec, from their poverty and
 " from other causes, they have not yet presented themselves. There are, how-

"ever, certain papers that accompanied your Excellency's reference, and are
 "hereunto annexed, which in order to avoid any longer delay, induce us to re-
 "port to your Excellency, that the facts alleged in the petition respecting the
 "arrest of Jacques Cir, *the Lieutenant of Militia at Madawaska*, and his being
 "conducted to the Grand Sault, and there compelled to give his promissory
 "note to Francis Albert, for ten pounds and thirteen shillings for pretended
 "expenses, said to have been occasioned by his having acted contrary to the
 "laws of the Province of New-Brunswick, appear to us to be true, judging
 "from the original papers, viz :—

"1. A copy of the writ of execution issued from the Court of Common Pleas
 "at Quebec, tested 15th February, 1792.

"2. A letter from François Cir and Jacques Cir to Colonel Dambourges,
 "certified by Régis Robichaud, without date.

"3. A paper signed Thomas Costin, *Juge à paix pour le district de Mada-
 "waska et York Comté*, purporting to be an Inhibition to François Cir and
 "Jacques Cir from executing any order issuing from any other Province within
 "the District of Madawaska, unless it be signed and ordered by a Judge of New
 "Brunswick, dated 26th March, 1792.

"4. An acknowledgment, to which is subscribed François Albert, of his hav-
 "ing received a promissory note of Jacques Cir, for ten pounds thirteen shil-
 "lings, for expenses occasioned by his having acted contrary to the laws of
 "New Brunswick, dated 28th March, 1792.

"5. A letter dated Madawaska, 23d April, 1792, from François Cir and
 "Jacques Cir, to Mr. Dambourges, Colonel of the South Militia.

"Lieutenant Colonel Baby of the Canadian Militia, assures us that a Com-
 "pany of Militia was established by His Excellency Lord Dorchester at Ma-
 "dawaska, about two years ago, and that Jacques Cir is a Lieutenant in that
 "Company, so that that fact is also true.

"We have applied to the Council Office here for a copy of any proceedings
 "that might have been had in Council respecting the line of division between
 "this Province and New Brunswick, and have obtained a copy of certain pa-
 "pers there deposited, which show that the line between the two Provinces
 "has not been ascertained: a copy of those papers we herewith submit to
 "your Excellency, viz :—

"1. Description of the Boundaries of the Provinces of Quebec and New
 "Brunswick, from His Excellency Lord Dorchester's Commissions, and the
 "United States of America, from the definitive Treaty of Peace, in the hand
 "writing of Mr. Secretary Motz.

"2. Copy of Lord Dorchester's Instructions to Mr. John Holland, who was
 "directed to accompany Mr. Finlay, in order to assist in marking out the
 "Boundary Line, dated Quebec, 9th July, 1787, also in the hand writing of
 "Mr. Secretary Motz.

"3. Letter by way of Report, from Mr. John Holland to Lord Dorchester,
 "dated Quebec, 26th July, 1787.

"4. Report of a Committee of Council charged to consider the subject of
 "the Boundary Line between the two Provinces, and the means of encoura-
 "ging the communication and settling the lands in that vicinity, dated Council
 "Chamber, 18th October, 1787.

"All which is respectfully submitted to your Excellency's consideration.

(Signed)

J. WILLIAMS, Sol. Gen.
 SAMUEL HOLLAND.

"Quebec, 29th July, 1792."

8. *Extract from the Minutes of the Executive Council of the Province of Quebec, 4th August, 1792.*

" Saturday, 4th August, 1792.

" At the Council Chamber, in the Bishop's Palace;

PRESENT :

" His Excellency Major General CLARKE, Lieutenant Governor.

" And the Honourable WILLIAM SMITH, }
HUGH FINLAY, } Esquires.
FRANÇOIS BABY, }

" Read the Memorial of A. and M. Robichaud, dated the 8th June, 1792.

" Read a Report of the Committee of Council, appointed to consider the
" *Boundary between the Provinces of Quebec and New-Brunswick, and the*
" *means of encouraging the communication and settlement of the lands in that*
" *vicinity, dated 18th October, 1787.*

" Read a Judgment of the Court of Common Pleas, dated 15th February,
" 1792.

" Read the Report of the Solicitor-General and Surveyor-General, dated
" Quebec, 20th July, 1792.

" Ordered, that *these Papers be entered upon the Minutes, and it is humbly*
" *suggested by the Board, that it may be expedient to transmit copies to the*
" *Lieutenant-Governor of the Province of New-Brunswick, for his co-opera-*
" *ting in representations to call the attention of His Majesty's Ministers to*
" *the adjustment of the limits necessary for preserving the public tranquillity*
" *on the borders of both Provinces.*"

9. *Extract from a List of the Parishes in the Province of Quebec, contained in the Minutes of the Executive Council of that Province, for the year 1791.*

" List of the Parishes in the Province of Quebec, with the dates of their
" *erection and their extent. Also, the names of the Seigneuries, parts of Seigneu-*
" *ries, Fiefs, and other Grants holding of the Crown in each Parish respectively*
" *comprehended; likewise the number of Male Inhabitants in every Parish, dis-*
" *tinguishing those of the age of 16 years and not exceeding 19, from those of 19*
" *years of age and upwards, in conformity to the Order issued the 22d Feb-*
" *ruary, 1790, by his Excellency the Right Honourable Guy, Lord Dorches-*
" *ter, Governor-General of the Province of Quebec, &c. &c., to a Committee*
" *of Council.*

PARISHES.	Seigneuries and other Grants holding of the Crown in each Parish.	Total of the Males in the respective Parishes.	REMARKS.
Madawaska.	Free and Common Soccage.	19 years and upwards. 65.	Under Grants from the Government of New-Brunswick.
	Settled by Acadians.		

" Malcolm Fraser, Esq., reports a Seigneurie to be in his possession, called
" Madawaska, near the River St. John, being of about three leagues on each
" side of the River Madawaska, together with the Lake Temiscouate, and
" two leagues in depth."

These documents clearly prove the unsettled condition, in point of fact, of the eastern part of the southern Boundary of the Government of Quebec from the Bay of Chaleurs along the Highlands—they also shew that immediately after the Treaty of 1783, when settlements began to be made on the upper part of the River Saint John, pretensions widely different were set up by the respective Provinces of Quebec and New Brunswick as to this Boundary.—The discussions between these Provinces upon this subject appear to have terminated with the proposition made by the Government of Quebec, on the 4th August, 1792, to call on the Government of the Mother Country to adjust the limits between them.—At this period the question as to what was the true River St. Croix intended in the Treaty of 1783, had arisen between Great Britain and the United States. The decision of this question, upon which the very starting point of the Boundary of the United States in the interior necessarily depended, was provided for in the Treaty of 1794, and since that time the other subjects of difference between the two Powers on points of boundary have been in a gradual process of development and decision, the most important among them being that which forms the subject of these remarks. The conflicting inter-colonial claims between Canada and New Brunswick as to the southern boundary of the former, have been awaiting the issue of the national controversy, and the result of this controversy will undoubtedly have a material influence on the judgment of the Mother Country in the future adjustment of these Provincial Boundaries.

But whatever doubt may exist as to the true position of the Boundaries between the Provinces of Lower Canada and New Brunswick, there is none as to the fact of *British* possession, either under the one Province or the other, of the whole district of country in which these boundaries are to be found. The Canadian jurisdiction has already been exhibited.—That of New Brunswick will now be adverted to. This is shewn in the history of "THE MADAWASKA SETTLEMENT"—for which reference will again be made to *American* authority. "THE MADAWASKA SETTLEMENT," it is always to be understood, is quite distinct from "THE FIEF OF MADAWASKA," and extends, on the *main* River St. John, from the neighbourhood of the Great Falls, upwards, for several miles above the confluence of the Madawaska River. The American authority, here referred to, is that of Mr. Barrell, a special Agent sent by the Government of the United States to the disputed Territory for purposes of inquiry, in the year

1828. His Report was communicated to Congress, in a Message from the President, on the 4th March, 1828. The following is an extract from this Report :—

" This settlement," says Mr. Barrell, " derives its name from the River Madawaska, which empties itself into the River St. John, about thirty-six miles above the Great Falls, and about one hundred and sixty miles above Fredericton. The first settlers arrived soon after the Treaty of 1783, and the first grant, which was of fifty-one several lots or plantations of land, was made to Joseph Muzeroll and fifty-one other French settlers, in the month of October, 1790, by Thomas Carleton, Esq., then Lieutenant Governor of the Province of New Brunswick. The land granted lay at intervals between the River Verte and the Madawaska River, nine miles distant from each other, and on both sides of the River St. John. The second grant was of 5253 acres of land lying below the River Verte, and was made to Joseph Soucer and others, by Lieutenant Governor Carleton, in August, 1794. These are the only grants ever made by the British Government within the settlement, excepting one to Limo Hibert,* of 250 acres of land opposite to and upon the River Madawaska, in May, 1825.

" *The laws of the Province of New Brunswick appear to have been always in force since the origin of that settlement.* The settlers have acquiesced in the exercise of British authority, both civil and military, among them, and have for many years had an organized militia in the settlement. * * * * * The population of Madawaska amounts to about 2,000, and is almost exclusively French."

In further elucidation of the history of "THE MADAWASKA SETTLEMENT," and in further proof of the actual possession of this part of the country, and of the exercise of jurisdiction over it by the Province of New Brunswick, there will be annexed to these remarks, full reports of two important trials which have taken place in the Supreme Court of this Province at Fredericton; the first being the trial of JOHN BAKER, in the month of May, 1828, and the other that of BARNABAS HANNAWELL and others, in the month of October, 1831.†

The facts elicited in these trials shew the anxious desire of the State of Maine to oust Great Britain of her long established and peaceable possession, in this quarter. But the

* Simon Hebert.

† Appendix No. II. and No. III.

doctrine laid down by the Court, as the clear rule of public law applicable to the case, namely, that "*the existing* British sovereignty and jurisdiction can be *changed* only by a public act of the British Crown for that purpose," has never been controverted. A change of *possession* may indeed be effected *by force*, but this is an alternative, which, it may be confidently asserted, the Government of the United States is not prepared to resort to, and to which Great Britain would never submit.

In an early part of these remarks it was observed, that by carrying the boundary line to the north of the River St. John, the prejudice thereby occasioned to the British Provinces would not be confined to a mere loss of territory. What has been stated respecting the point of *actual possession* confirms the truth of that observation. The extensive *Fief of Madawaska*, which, as already remarked, was granted several years before the Charter of Massachusetts, and which has been held uninterruptedly under Canadian jurisdiction to the present day, would be thereby transferred to The United States, whose claims to territory, during the negotiations of 1783, could never for a moment have been supposed to extend beyond their rights when clearly established as British Provinces. The British authorities would also be thereby called upon to surrender a jurisdiction which they have continually exercised as far as the Great Falls of the River St. John, from the earliest period at which any settlements have been formed in that part of the country. A large body of British subjects holding property within the same territory, and some of whom have held it in uninterrupted succession from the period of 1763, would be compelled either to resign the possessions of their families, or to retain them under a Government to which they owe no natural allegiance.

Nor would these be the only prejudicial consequences resulting to Great Britain from the proposed transfer of territory to The United States. It is well known to what degree the direct communication between Quebec and New Brunswick would be thereby impeded. How far the communication between one part of Canada and another,—between Quebec, for instance, and the settlements at Gaspé,—would be rendered more difficult by the same award, may be collected from Bouchette's *Topography of Canada*, page 587.

It may be doubted whether the anticipation of so much detriment to British interests, though unattended with any corresponding advantages to The United States, and evidently

calculated to defeat the most enlightened intentions of the Treaty, as explained before, would alone justify a departure from the strict rule of right, supposing it to be made clear in favour of the United States. But in proportion as the above mentioned consequences are evident, it is difficult to conceive that the British Government could ever have lent itself to an arrangement from which these consequences must naturally have been expected to flow; and the stronger, therefore, is the presumption that the acknowledgment by Great Britain of the independence of The United States was felt to impose upon her the duty of carrying her claims, whatever they may have been, to the utmost extent warranted by principles of equity and considerations of mutual convenience, in order to protect the interests and secure the rights of her remaining Provinces.

Presumptions, however probable, are not the sole foundations of the British claim. It has been proved, that the Rivers designated in the Treaty are not those which The United States insist upon, in virtue of an interpretation necessary indeed to the prosecution of their argument, but wholly unwarranted by the letter, context, and spirit of the Treaty. It has also been proved, that the Highlands which they maintain to be the Highlands intended by the Treaty, exclusive of all others, agree neither with the specific terms of the Treaty nor with the intention of those who framed it, as manifested by the general tenor of that instrument, and by the circumstances which accompanied its negotiation. It has been shewn to demonstration, that the north-west angle of Nova Scotia was totally unknown in 1783, that no provincial boundary line had been acknowledged, ascertained, or even existed for any practical purpose, at that time between the western extremity of Chaleurs Bay, and the Highlands situated at the heads of the Kennebec and Chaudiere Rivers, and consequently that the supposed identity between that line and the line now claimed by The United States, is a mere illusion, resting on no positive foundation whatever.

On the other hand, it has been established by proofs, sufficient to satisfy any reasonable and impartial mind, that the Rivers, described in the Treaty, as falling into the Atlantic Ocean, are entirely distinct from those which fall into the Bay of Fundy or the Bay of Chaleurs; that the Highlands designated in the Treaty, are those which lying to the south of the River St. John, trend westward from the due north line drawn from the source of the St. Croix; and, finally,

that the line claimed by Great Britain, as passing along those Highlands from the point called Mars Hill, is not only more consistent with the precise terms of the Treaty, than any other line hitherto proposed, but is calculated to fulfil in every important respect the declared as well as the presumed intentions of the Treaty, leaving within the territories of either Power the whole of those Rivers, of which the mouths are situated respectively therein, and in this manner providing most effectually for that great principle of the Treaty which has been already pointed out, that is to say, the advantage and convenience of both parties.

NORTH-WESTERNMOST HEAD OF CONNECTICUT RIVER.

THE second article of the Treaty of 1783, after describing the Highlands, along which the northern boundary of The United States was to be carried, adds, that the boundary line was to extend "*to the north-westernmost head of Connecticut River,*" and "*thence down along the middle of that river to the 45th degree of north latitude.*"

It is claimed, on the part of Great Britain, that the boundary line in question should be carried to the source of the north-westernmost stream, which flows into the uppermost of the Lakes above Connecticut Lake, up to which the Connecticut River is known by that distinctive appellation; and that from thence the line should be traced down along the middle of that river to the 45th degree of north latitude.

The grounds on which that claim has been rested, are, first, that the River, which issues from Connecticut Lake, now bears, and has always been known by the sole appellation of Connecticut River, and, secondly, that, as no stream, which joins the Connecticut River below where it is known by that name, can with propriety, or according to geographical practice, be taken for the Connecticut River; so, it is certain that no head-water of such stream can be taken for a head water of the river itself.

In opposition to the British claim, it is contended, on the part of The United States, that the north-westernmost head of Connecticut River intended by the Treaty, is either a certain head of a stream called Hall's Stream, or one of another stream, called Indian Stream, both which streams fall into the Connecticut or main Connecticut River, from the north;

the former at a short distance above or below the 45th degree of north latitude, according as the real situation of that parallel, or its supposed situation agreeably to a survey made in the year 1772,* is taken, and the latter between two or three miles, more or less, according as the one or the other of those principles is adopted, above the same parallel.

The grounds upon which this counter-claim of The United States is maintained, are various, but they are all reducible to one, namely, that the "head of Connecticut River" intended by the Treaty is the head of the north-westernmost branch falling into that river, without reference to the specific appellation, or superior volume and length of the main river above its confluence with that branch.

It is evident that in this proposition two terms essentially different from each other, are confounded together. Hall's Stream, and Indian Stream, are *branches* of the Connecticut River, *each having its own peculiar heads or sources*. The Connecticut River has also its heads or sources independent of them, and it is, no doubt, the most north-westerly of these last mentioned sources or heads, that is "the *north-westernmost head of Connecticut River*," which the framers of the Treaty intended to designate.

No one would think of looking for the heads of the Rhine at the sources of the Moselle and Maine, though both these rivers are tributary to the Rhine in the same manner as Hall's Stream and Indian Stream are tributary to the Connecticut, but they must be looked for in the range of the St. Gothard Mountains, where the several heads of the Rhine, to whatever point of the compass they may be referred, are alone to be found. The same observation may be applied with equal truth to the Mississippi, the Ohio, and the Missouri. The waters of these three great rivers of the North American continent finally unite in one channel, and reach the Gulf of Mexico under the common name of Mississippi. But each of them has its own heads and sources distinct from those of the other two. On Mitchell's map the sources of the Ohio are laid down by name a little to the south of Lake Ontario; and the heads of the Mississippi, of which the precise situation was then unknown, are pointed to in equally express terms at a distance of nearly thirty degrees of longitude to the west.

In treating this question, The United States have fallen into an error of the same kind as that which led them to

* This survey will be more particularly adverted to under the third head of these remarks.

confound the Bay of Fundy with the Atlantic Ocean in discussing the former point of difference. Except where different branches of a river bear the same name, with some distinctive addition applied, as in the case of the Penobscot, to each branch, the name which is borne by a river at its mouth, accompanies the main channel, and the main channel alone, as it is traced upwards into the country. Wherever the river forks, the name, if it be not altogether lost, as in some peculiar instances, adheres to that branch which exhibits in the strongest degree the characteristics of the river below the confluence, and the length of the channel so named constitutes the river to which the name applies. It has already been shewn, that the heads of a river are not to be confounded with its branches, which have separate heads of their own, and, in the particular case now under discussion, distinctive appellations. The branches terminate at their juncture with the main river.

Other strong arguments, in support of the British, and in refutation of the American claim upon this point, might be adduced; but it is intended, in these remarks, to give only a general view of this part of the dispute.

BOUNDARY ALONG THE PARALLEL OF 45° NORTH LATITUDE.

THE principal circumstances relating to this third point of difference may be comprized in few words.

By the 5th Article of the Treaty of Ghent it was agreed that Commissioners, to be appointed for the purpose, should cause the boundary "from the source of the River St. Croix "to the River Iroquois or Cataraguy (St. Lawrence) to be "surveyed and marked." A preceding clause of the same article contains the following words: "whereas that part of "the boundary line between the dominions of the two "Powers, which extends from the source of the River St. "Croix,—to the north-westernmost head of Connecticut "River, thence down along the middle of that river, to the "45th degree of north latitude, until it strikes the River "Iroquois or Cataraguy, has not yet been surveyed," &c. Then comes the agreement as above.

The particular part of the boundary line here in question is that which extends *from the middle of the Connecticut River along the 45th degree of north latitude to the River St. Lawrence.*

The survey agreed by the Treaty to be made of this portion of the boundary line was commenced and executed, with respect to a considerable part of it, by Astronomers duly appointed for the service in the year 1818. The British Commissioner and Agent were uniformly ready and desirous to proceed in this work; the difficulties which prevented it arose altogether on the part of The United States.

The complete execution of the survey thus agreed to be made, is claimed by Great Britain on the simple ground of the clear binding terms of the Treaty.

The United States now object to the execution of the Treaty in that particular, on the ground of its having been ascertained, that the part of the boundary line in question had been previously surveyed and marked, and, therefore, on the supposition that the Treaty of Ghent did not intend to institute a fresh survey of those parts of the boundary line, which were already surveyed and marked by competent authority, but only to cause a survey to be made of those parts of it which had not been before surveyed and marked in that official manner.

It remains to be decided, whether an express stipulation of a Treaty is to be set aside in order to justify The United States in retaining a portion of British Territory, which had passed into their possession in consequence of a delimitation at variance with the express terms of the Treaty, and which they continue to hold only by deferring the execution of a positive provision of the Treaty of Ghent.

Great Britain claims, as the line due west on latitude 45° from Connecticut River to the River St. Lawrence truly intended in the 5th Article of the Treaty of Ghent, the parallel of latitude 45° between these two rivers as resulting from the astronomical observations made under the authority and by the order of the Commissioners appointed to carry into effect the provisions of that Article of the Treaty.

The Agent of The United States opposed heretofore the claim of Great Britain, by laying before the Board of Commissioners proof of the running of a line intended to be along the parallel of latitude 45° , and extending from Connecticut River to within about ten miles of the river now called Saint Lawrence, by order of the Governments of New York and Quebec, between the years 1771 and 1774. This line, he contended, having been for many years acknowledged as the boundary between the two countries, the provisions of the Treaty of Ghent

that a line due west on latitude 45° from Connecticut River to the River Saint Lawrence, shall be surveyed and marked, had in view only the ten miles which had been left unfinished, and not the 140 miles which were already surveyed and marked under the authority of the local Governments.*

The claim of The United States to the old line of boundary, which their Agent had thus endeavoured to uphold by the circumstance that this line had formerly been left incomplete, was afterwards supported by the contrary proof that this same line had been entirely completed at the time above referred to. It appears, indeed, that the same archives, from which the Agent of The United States drew his materials for proving that the line upon latitude 45° had been only partially ascertained, contain likewise the proof that the whole of this line had been determined under the same authority, without any other interruption than that interposed by the seasons, and that all portions of this line had received an equal sanction from the two provincial governments. There is no intention, on the part of Great Britain, to deny that this line had been considered as accurate in the year 1774, when it was finished. It must likewise be allowed, that this line having been once established, has continued for want of a better one, to be practically the line of boundary between the two countries. But it is capable of proof, that long before the conclusion of the Treaty of Ghent, both Governments had received information which must have entirely altered their opinion respecting the correct execution of this line. It appears from documents laid before the late Commission, that each of the two Governments had good reason to believe, that the territory which would have fallen to its share from the line of boundary, if correctly ascertained, had been considerably curtailed by the errors which had

* The American Agent, at the same time, declared, that if his view, with regard to this former survey, should not be acquiesced in by the Commissioners, and if the question should be still considered as unsettled, he should, in that case, be compelled to require that the parallel of 45° north latitude should be laid down according to what he termed the principles of "*geocentric latitude*" as contra-distinguished from the generally received or "*observed latitude*." The practical effect of the substitution of *geocentric* for *observed* latitude would be to throw the parallel of 45° north latitude, about *thirteen* miles further to the north than the true parallel. This claim to the adjustment of the boundary line in question upon the principle of *geocentric* latitude, thus put forth by the American Agent, although not afterwards urged, yet was never disavowed or retracted by the American Government. It was probably owing to this circumstance that the King of the Netherlands, in his award, expressly declared, that the line upon the parallel of 45° should be run upon the principle of the *observed* latitude.

crept into the operations of the surveyors, by whom this line had been determined. It is not surprising indeed, that the Governments should readily have given credit to the information which they received respecting the inaccuracy of this line. The latitude of but one single spot on the eastern bank of Lake Champlain, had been ascertained in the year 1767, at a time when portable instruments for accurately determining the latitude were rare in Europe, and much more so in America. From this spot surveyors had, apparently by means of the magnetic needle only, run lines intended to be along the parallel of latitude 45° , extending to the distance of ninety miles on one side, and sixty miles on the other, without ever checking their operations by any new determinations of latitude. These operations required of course a very exact knowledge of the variation of the needle, which is not very readily obtained, and they were carried on through an almost uninterrupted dense forest. The State of Vermont, whose northern boundary is formed by the line on latitude 45° , extending ninety miles from the eastern bank of Lake Champlain to Connecticut River, appears to have first suspected the accuracy of this line; and, as early as the year 1806, the Government of that State engaged Dr. Williams, the historian and philosopher of Vermont, to ascertain the correctness of their northern boundary.

He reported that the line, as drawn, deviated to the southward of the parallel, under an angle of eight degrees; that it consequently cut off, in its eastern prolongation, more and more from the territory which ought to belong to the State of Vermont, and that that State had suffered a loss of more than 600 square miles of its territory by the whole course of this erroneous line. The Report of Dr. Williams was received and approved by the Legislature of Vermont; and it appears, that, in the opinion of the people of that State, the inaccuracy of their northern boundary, and their loss by it, was from that time placed beyond the reach of doubt.

It appears that the Government of Vermont only waited for a favourable moment in order to obtain through the mediation of the General Government of The United States, the territory of which they thought themselves unjustly deprived. This opportunity presented itself at the conclusion of Peace in 1814; and the Treaty of Ghent contains, accordingly, the provisions cited above.*

* It is to be observed that the Treaty uses the words "ascertain and determine" with regard to points only; the operation of tracing or running a line is in the language of the Treaty designated by the words "survey and mark."

It is not contended on either side, that the negotiators of the Treaty of Ghent were unacquainted with the existence of the old line, and the American negotiators must certainly have been as fully aware of it as the British. Both parties must have been desirous of substituting a new correct line of boundary for the old one, the errors of which were generally known, when such a good opportunity presented itself, especially as other circumstances rendered it advisable to establish the other parts of the boundary which had never yet been established at all. The clear words of the Treaty, by which the surveying and marking of this part of the boundary, is made one of the "several purposes" for which the Commissioners were to be appointed, manifestly prove, that such was the intention of both Governments, parties to the Treaty. That this was really the intention of the framers of the Treaty, and that the words of the Treaty were at first likewise understood agreeably to this interpretation by the Government of The United States, clearly appears from what has taken place during several years subsequent to the date of the Treaty. The American Negotiators of the Treaty of Ghent are alive, and no deposition of any one of them, as in the case of the River St. Croix, has been brought forward to prove that they were unacquainted with the existence of the old line, or that it was not their intention that this provision of the Treaty should have the effect, that a new line of boundary along the parallel of latitude 45° from the Connecticut River to the River St. Lawrence, should be established by accurate astronomical observations.

No reluctance was shewn on the part of The United States, to carry on the operations necessary for the determination of the parallel of latitude, till some time after it was known that the changes which would be produced by the establishment of the new parallel of latitude as the boundary line, would be mainly against the interest of The United States, principally by the loss of the fortifications at Rouse's Point on the western bank of Lake Champlain.

It having been thus clearly proved that there was sufficient reason for making the provision that the parallel of latitude 45° from Connecticut River to the River St. Lawrence should

These words are in the 5th Article of the Treaty applied to a line consisting of four different parts, viz: a meridian,—a line along highlands,—a line through a river,—and a parallel of latitude. It is well known that the meridian had never been established, and that, therefore, the words "survey and mark" were in the Treaty intended to imply all the operations required for ascertaining it, and among these astronomical observations.

be established anew ; that the provision that such a new parallel should be surveyed and marked under the authority of the Commissioners appointed by both Governments is clearly expressed in the Treaty ; that there is no reason to believe, that it was not the intention of the negotiators who framed the Treaty, as well as of the Governments who ratified it, that this new line should be established, and be considered as finally and conclusively fixing the boundary between the two countries ; and that both Governments sanctioned for several years the measures which were taken for carrying into effect this particular provision, Great Britain believes that she has fully proved the justice of the claim which she has preferred, and contends, accordingly, that the provision, as cited above, of the 5th Article of the Treaty of Ghent, shall be carried into complete effect.

As a matter of historical interest, connected with this subject, there will be subjoined to these remarks the Award of the King of the Netherlands.* This award was, in the outset, peremptorily rejected by The United States, and in the progress of negotiation Great Britain also withdrew her consent to be bound by it. Whether it was liberal or wise in The United States, thus to reject this award, every candid man will form his own opinion. The award has been described in a report of the Senate of the United States, as " The impartial opinion of a disinterested Judge, selected " by both parties, *to settle a question of great perplexity.*"

* Appendix No. I.

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APPENDIX.

NO. I.

DECISION

OF THE KING OF THE NETHERLANDS, IN RELATION TO THE DISPUTED POINTS OF BOUNDARY

Under the Fifth Article of the Treaty of Ghent.

TRANSLATION. *

WILLIAM, by the Grace of **GOD**, King of the Netherlands, Prince of Orange, Nassau; Grand Duke of Luxemburg, &c. &c. &c.

HAVING accepted the functions of Arbitrator conferred upon us by the note of the Charge d'Affairs of the United States of America, and by that of the Ambassador Extraordinary and Plenipotentiary of Great Britain, to our Minister of Foreign Affairs, under date of the 12th January, 1829, agreeably to the fifth article of the Treaty of Ghent; of the 14th December, 1814, and to the first article of the Convention concluded between those Powers at London, on the 29th September, 1827, in the difference which has arisen between them on the subject of the boundaries of their respective possessions :

Animated by a sincere desire of answering, by a scrupulous and impartial decision, the confidence they have testified to us, and thus to give them a new proof of the high value we attach to it :

Having to that effect, duly examined and maturely weighed the contents of the first statement, as well as those of the definite statement of the said difference, which have been respectively delivered to us on the 1st of April of the year 1830, by the Envoy Extraordinary and Minister Plenipotentiary of the United States of America, and the Ambassador Extraordinary and Plenipotentiary of His Britannic Majesty, with all the documents thereto annexed in support of them :

Desirous of fulfilling at this time the obligations we have contracted in accepting the functions of Arbitrator in the aforesaid difference, by laying before the two high interested parties the result of our examination, and our opinion on the three points into which, by common accord, the contestation is divided.

Considering that the three points above mentioned ought to be decided according to the treaties, acts and conventions concluded between the two Powers; that is to say : the Treaty of Peace of 1783, the Treaty of Friendship, Commerce and Navigation of 1794, the Declaration relative to the River St. Croix of 1798, the Treaty of Peace signed at Ghent in 1814, the Convention of the 29th September, 1827; and Mitchell's Map, and the Map A. referred to in that convention.

We declare, that, As to the first point, to wit, the question, which is the place designated in the Treaties as the North-west angle of Nova Scotia, and what are the highlands dividing the Rivers that empty themselves into the River St. Lawrence from those which fall into the Atlantic Ocean, along which is to be drawn the line of Boundary, from that angle to the North-western-most head of Connecticut River.

* Note.—This is the American official translation.

Considering, That the high interested parties respectively claim that line of boundary at the South, and at the North of the River St. John; and have each indicated on the Map A. the line which they claim.

Considering, That according to the instances alleged, the term highland applies not only to a hilly or elevated country, but also to land which, without being hilly, divides waters flowing in different directions; and that thus the character more or less hilly and elevated of the country through which are drawn the two lines respectively claimed, at the North, and at the South, of the River St. John, cannot form the basis of a choice between them.

That the text of the second Article of the Treaty of 1783, recites, in part, the words previously used, in the Proclamation of 1763, and in the Quebec act of 1774, to indicate the Southern boundaries of the Government of Quebec, from Lake Champlain, "in forty-five degrees of North Latitude, along the highlands which divide the Rivers that empty themselves into the River St. Lawrence, from those which fall into the sea, also along the north coast of the Bay des Chaleurs."

That in 1763, 1765, 1773, and 1782, it was established that Nova Scotia should be bounded at the north, as far as the western extremity of the Bay des Chaleurs, by the southern boundary of the Province of Quebec; that this delimitation is again found, with respect to the Province of Quebec, in the Commission of the Governor General of Quebec of 1786, wherein the language of the Proclamation of 1763 and of the Quebec Act of 1774, has been used, as also in the commissions of 1783, and others of subsequent dates of the Governors of New Brunswick, with respect to the last mentioned Province, as well as in a great number of maps anterior and posterior, to the Treaty of 1783; and the first article of the said treaty specifies, by name, the states whose independence is acknowledged:

But that this mention does not imply (implique) the entire coincidence of the boundaries between the two powers, as settled by the following Article, with the ancient delimitation of the British Provinces, whose preservation is not mentioned in the Treaty of 1783, and which owing to its continual changes, and the uncertainty which continued to exist respecting it, created, from time to time, differences between the Provincial authorities:

That there results from the line drawn under the treaty of 1783, through the great Lakes, west of the River St. Lawrence, a departure from the ancient provincial charters, with regard to those boundaries:

That one would vainly attempt to explain why, if the intention was to retain the ancient provincial boundary, Mitchell's map, published in 1775, and consequently anterior to the proclamation of 1763, and to the Quebec Act of 1774, was precisely the one used in the negotiation of 1783:

That Great Britain proposed, at first, the River Piscataqua as the Eastern boundary of the United States; and did not subsequently agree to the proposition to cause the boundary of Maine, or Massachusetts Bay, to be ascertained at a later period:

That the treaty of Ghent stipulated for a new examination on the spot, which could not be made applicable to an historical or administrative boundary:

And that, therefore, the ancient delimitation of the British Provinces, does not, either, afford the basis of a decision:

That the longitude of the North-west angle of Nova Scotia, which ought to coincide with that of the source of the St. Croix River, was determined only by the declaration of 1798, which indicated that River:

That the Treaty of friendship, commerce, and navigation of 1794, alludes to the doubt which had arisen with respect to the River St. Croix, and that the first instructions of the Congress at the time of the negotiations which resulted in the Treaty of 1783, locate the said angle at the source of the River St. John:

That the latitude of that angle is upon the banks of the St. Lawrence, according to Mitchell's map, which is acknowledged to have regulated the com-

bined and official labors of the negotiators of the Treaty of 1783; whereas, agreeably to the delimitation of the government of Quebec, it is to be looked for at the highlands which divide the Rivers that empty themselves into the River St. Lawrence from those which fall into the sea.

That the nature of the ground east of the before mentioned angle not having been indicated by the treaty of 1783, no argument can be drawn from it to locate that angle at one place in preference to another:

That, at all events, if it were deemed proper to place it nearer to the source of the river St. Croix, and look for it, at Mars Hill, for instance, it would be so much the more possible that the boundary of New-Brunswick drawn thence north-eastwardly would give to that Province several north-west angles, situated farther north and east, according to their greater remoteness from Mars Hill, that the number of degrees of the angle referred to in the Treaty has not been mentioned:

That, consequently, the north-west angle of Nova Scotia, here alluded to, having been unknown in 1783, and the Treaty of Ghent having again declared it to be unascertained, the mention of that historical angle in the treaty of 1783 is to be considered as a petition of principle (*petition de principe*) affording no basis for a decision, whereas, if considered as a topographical point, having reference to the definition, viz: "that angle which is formed by a line drawn due north from the source of the St. Croix River to the highlands," it forms simply the extremity of the line "along the said highlands, which divide those Rivers that empty themselves into the River St. Lawrence from those which fall into the Atlantic Ocean,"—an extremity which a reference to the north-west angle of Nova Scotia does not contribute to ascertain, and which still remaining, itself, to be found, cannot lead to the discovery of the line which it is to terminate:

Lastly, that the arguments deduced from the rights of sovereignty exercised over the Fief of Madawaska and over the Madawaska settlement—even admitting that such exercise were sufficiently proved—cannot decide the question, for the reason that those two settlements only embrace a portion of the territory in dispute, and that the high interested parties have acknowledged the country lying between the two lines respectively claimed by them, as constituting a subject of contestation, and that, therefore, possession cannot be considered as derogating from the right, and that if the ancient delimitation of the provinces be set aside, which is adduced in support of the line claimed at the north of the River Saint John, and especially that which is mentioned in the Proclamation of 1763, and in the Quebec Act of 1774, no argument can be admitted in support of the line claimed at the south of the River St. John, which would tend to prove that such part of the territory in dispute belongs to Canada or to New-Brunswick.

Considering, that the question divested of the inconclusive arguments drawn from the nature, more or less hilly of the ground,—from the ancient delimitation of the Provinces,—from the north-west angle of Nova Scotia, and from the actual possession, resolves itself, in the end, to these: which is the line drawn due north of the River St. Croix, and which is the ground, no matter whether hilly and elevated, or not, which from that line to the north-westernmost head of Connecticut River, divides the Rivers that empty themselves into the River St. Lawrence from those which fall into the Atlantic Ocean; That the high interested parties only agree upon the fact that the boundary sought for must be determined by such a line, and by such a ground; that they further agree, since the declaration of 1798, as to the answer to be given to the first question, with the exception of the latitude at which the line drawn due north from the source of the St. Croix River is to terminate; that the said latitude coincides with the extremity of the ground which from that line to the north-westernmost source of Connecticut River divides the Rivers which empty themselves into the River St. Lawrence from those which fall into the Atlantic Ocean; and that, therefore, it only remains to ascertain that ground:

That on entering upon this operation, it is discovered on the one hand :

First, that if, by adopting the line claimed at the north of the River St. John, Great Britain cannot be considered as obtaining a territory of less value than if she had accepted, in 1783, the river St. John as her frontier, taking into view the situation of the country situated between the Rivers St. John and St. Croix in the vicinity of the sea, and in the possession of both banks of the River St. John in the lower part of its course, said equivalent would, nevertheless be destroyed by the interruption of the communication between Lower Canada and New Brunswick, especially between Quebec and Fredericton ; and one would vainly seek to discover what motives could have determined the Court of London to consent to such an interruption.

That if, in the second place, in contradistinction to the Rivers that empty themselves into the River St. Lawrence, it had been proper, agreeably to the language ordinarily used in geography, to comprehend the Rivers falling into the Bay of Fundy and Bay des Chaleurs with those emptying themselves directly into the Atlantic Ocean, in the general denomination of Rivers falling into the Atlantic Ocean, it would be hazardous to include in the species belonging to that class the rivers Saint John and Restigouche, which the line claimed at the north of the River St. John divides immediately from Rivers emptying themselves into the River St. Lawrence, not with other Rivers falling into the Atlantic Ocean, but alone ; and thus to apply in interpreting the delimitation established by a treaty, where each word must have a meaning, to two exclusively special cases, and where no mention is made of the genus (genre) a general expression which would ascribe to them a broader meaning, or which, if extended to the Schoodic lakes, the Penobscot and the Kennebec, which empty themselves directly into the Atlantic Ocean, would establish the principle that the Treaty of 1783 meant highlands that divide as well mediately as immediately, the Rivers that empty themselves into the River St. Lawrence from those which fall into the Atlantic Ocean—a principle equally realized by both lines.

Thirdly : That the line claimed at the north of the River St. John does not divide, even immediately the Rivers that empty themselves into the River St. Lawrence from the Rivers St. John and Restigouche, but only rivers that empty themselves into the St. John and Restigouche, with the exception of the last part of said line, near the sources of the River St. John, and that hence in order to reach the Atlantic Ocean, the Rivers divided by that line from those that empty themselves into the River St. Lawrence, each need two intermediate channels, to wit : the ones, the River St. John and the Bay of Fundy, and the others, the River Restigouche and the Bay of Chaleurs :

And on the other hand, that it cannot be sufficiently explained how, if the high contracting parties intended, in 1783, to establish the boundary at the south of the River St. John, that river, to which the territory in dispute is in a great measure, indebted for its distinctive character, has been neutralized and set aside.

That the verb "divide" appears to require the contiguity of the objects to be "divided."

That the said boundary forms at its western extremity, only, the immediate separation between the River Mettjarmette, and the north-westernmost head of the Penobscot, and divides, mediately, only the Rivers that empty themselves into the River St. Lawrence from the waters of the Kennebec, Penobscot, and Schoodic Lakes ; while the boundary claimed at the north of the River Saint John divides, immediately, the waters of the Rivers Restigouche and St. John, and mediately, the Schoodic lakes, and the waters of the Rivers Penobscot and Kennebec, from the Rivers that empty themselves into the River St. Lawrence, to wit : the rivers Beaver, Metis, Rimousky, Trois, Pistoles, Green, Du Loup, Kamouraska, Ouelle, Bras St. Nicholas, Du Sud, La Famine and Chaudiere.

That even setting aside the Rivers Restigouche and St. John, for the reason that they could not be considered as falling into the Atlantic Ocean, the northern line would still be as near to the Schoodic lakes, and to the waters of the Penobscot and of the Kennebec, as the southern line would be to the Rivers Braver, Metis, Rimousky and others, that empty themselves into the River St. Lawrence; and would, as well as the other, form a mediate separation between these and the Rivers falling into the Atlantic Ocean:

That the prior intersection of the southern boundary by a line drawn due north from the source of the Saint Croix could only secure to it an accessory advantage over the other, in case both the one and the other boundary should combine, in the same degree, the qualities required by the treaties:

And the fate assigned by that of 1783 to the Connecticut, and even to the St. Lawrence, precludes the supposition that the two powers could have intended to surrender the whole course of each river from its source to its mouth, to the share of either the one or the other:

Considering, That, after what precedes, the arguments adduced on either side, and the documents exhibited in support of them, cannot be considered as sufficiently preponderating to determine a preference in favor of one of the two lines respectively claimed by the high interested parties, as boundaries of their possessions from the source of the River St. Croix to the north-westernmost head of Connecticut River; and that the nature of the difference and the vague and not sufficiently determinate stipulations of the Treaty of 1783, do not permit to adjudge either of those lines to one of the said parties, without wounding the principles of law and equity, with regard to the other:

Considering, That, as has already been said, the question resolves itself into a selection to be made of a ground dividing the Rivers that empty themselves into the St. Lawrence from those that fall into the Atlantic Ocean; that the high interested parties are agreed with regard to the course of the streams delineated by common accord on the Map A. and affording the only basis of a decision.

And that, therefore, the circumstances upon which such decision depends could not be further elucidated by means of fresh topographical investigation, nor by the production of additional documents:

We are of opinion, That it will be suitable [il conviendra] to adopt as the boundary of the two states a line drawn due north from the source of the River St. Croix to the point where it intersects the middle of the thalweg (*) of the River St. John, thence the middle of the thalweg of that River, ascending it, to the point where the River St. Francis empties itself into the River St. John, thence the middle of the thalweg of the River St. Francis, ascending it, to the source of its south-westernmost branch, which source we indicate, on the Map A, by the letter X, authenticated by the signature of our Minister of Foreign Affairs, thence a line drawn due west, to the point where it unites with the line claimed by the United States of America and delineated on the Map A, thence said line to the point at which according to said map, it coincides with that claimed by Great Britain, and thence the line traced on the map by the two powers, to the north-westernmost source of Connecticut River:

As regards the second point, to wit: the question, which is the north-westernmost head of Connecticut River:

Considering, That, in order to solve this question, it is necessary to choose between Connecticut-lake River, Perry's Stream, Indian Stream and Hall's Stream:

Considering, That according to the usage adopted in geography, the source and the bed of the River are denoted by the name of the River which is attached to such source and to such bed, and by their greater relative importance as compared to that of other waters communicating with said river:

* Thalweg—a German compound word—Thal, valley, and Weg, way. It means here the deepest channel of the river.

Considering, That an official letter of 1772 already mentions the name of Hall's Brook; and that in an official letter, of subsequent date in the same year, Hall's Brook is represented as a small river falling into the Connecticut:

That the River in which Connecticut Lake is situated appears more considerable than either Hall's, Indian, or Perry's Stream; that Connecticut Lake and the two Lakes situated northward of it, seem to ascribe to it a greater volume of water than to the other three Rivers; and that by admitting it to be the bed of the Connecticut, the course of that river is extended farther than it would be if a preference were given to either of the other three Rivers:

Lastly, that the Map A, having been recognized by the convention of 1827, as indicating the courses of streams, the authority of that map would likewise seem to extend to their appellation, since in case of dispute, such name of River, or Lake, respecting which the parties were not agreed, might have been omitted; that said map mentions Connecticut Lake, and that the name of Connecticut Lake implies the applicability of the name of Connecticut to the River which flows through the said lake;

We are of opinion, that the stream situated farthest to the north-west, among those which fall into the northernmost of the three lakes, the last of which bears the name of Connecticut Lake, must be considered as the north-westernmost head of Connecticut River:

As to the third point, to wit: the question which is the boundary to be traced from the River Connecticut, along the parallel of the 45th degree of north latitude, to the River Saint Lawrence, named in the Treaties Iroquois or Cataraguy:

Considering, that the high interested parties differ in opinion as to the question—Whether the Treaties require a fresh survey of the whole line of boundary from the River Connecticut to the River St. Lawrence, named in the Treaties Iroquois or Cataraguy, or simply the completion of the ancient provincial surveys.

Considering: That the fifth article of the Treaty of Ghent of 1814 does not stipulate that such portion of the boundaries which may not have hitherto been surveyed, shall be surveyed; but declares that the boundaries have not been; and establishes that they shall be, surveyed:

That, in effect, such survey ought, in the relations between the two powers, to be considered as not having been made from the Connecticut to the River St. Lawrence, named in the treaties Iroquois or Cataraguy, since the ancient survey was found to be incorrect, and had been ordered, not by a common accord of the two Powers, but by the ancient Provincial authorities:

That in determining the latitude of places, it is customary to follow the principle of the observed latitude.

And that the Government of the United States of America has erected certain fortifications at the place called Rouse's Point, under the impression that the ground formed part of their territory—an impression sufficiently authorized by the circumstances that the line had, until then, been reputed to correspond with the 45th degree of North Latitude;

We are of opinion: That it will be suitable [il conviendra] to proceed to fresh operations to measure the observed latitude, in order to mark out the boundary from the River Connecticut along the parallel of the 45th degree of North Latitude to the River St. Lawrence, named in the treaties Iroquois or Cataraguy, in such a manner, however, that, in all cases, at the place called Rouse's Point the territory of the United States of America shall extend to the fort erected at that place, and shall include said fort and its Kilometrical radius [rayon Kilometrique.]

Thus done and given under our Royal Seal, at the Hague, this tenth day of January, in the year of our LORD one thousand eight hundred and thirty one, and of our Reign, the eighteenth.

WILLIAM.

The Minister of Foreign Affairs,

(Signed)

VERSTOLK DE SOELEN.

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NO. II.

[From the Fredericton Royal Gazette, May 12, 1828.]

REPORT OF THE TRIAL OF JOHN BAKER.

Supreme Court.

Easter Term.

DURING the sitting of the Court on Wednesday, the Attorney General [ROBERT PARKER, Esquire,] stated to the Court, that he should be prepared on Thursday morning to proceed with the Trial of the Indictment which had been found against John Baker, and two others; and understood the Defendant was in attendance.

On Thursday, immediately after the opening of the Court, the Attorney General moved for Trial; and as the Jury was called, it was intimated to the Defendant Baker, by the Court, that he might challenge any of the Jurors for cause: The defendant availing himself of this privilege, and the Jurors were sworn, in the order they appeared.

The Clerk of the Crown read the Indictment, which charged the Defendants John Baker, James Bacon, and Charles Stedson; that they being factiously and seditiously disposed, and greatly disaffected to the Government of His Majesty within this Province; did, at the Parish of Kent, in the County of York, conspire, combine, confederate, and agree together, falsely, maliciously, and seditiously, to molest and disturb the peace and common tranquillity of this Province, and to bring into hatred and contempt the King and his Government, and to create false opinions and suspicions in His Majesty's Subjects, of and concerning the King's Government and Royal Power and Prerogative within the same: and did thereupon then and there erect a flag staff, and place thereon a flag as the standard of the United States, and did declare the place to be the territory of the United States, and did also afterwards present to His Majesty's Subjects, a paper writing, and requested them to sign it, declaring that by such paper they would bind themselves to oppose the execution of the laws of Great Britain in that part of the said Parish, called the MADAWASKA SETTLEMENT: and did also obstruct the passage of His Majesty's Mail, declaring that the British Government had no right to send its Mail by that route; and that they had received orders from the United States to stop the conveyance of the Mail through the same: and did also afterwards at another time, hoist the flag of the United States on a Staff there erected; declaring that they had actually entered into a written agreement to keep the same flag there, and nothing but a stronger force should take it down; and that they had bound themselves to resist by force the execution of the Laws of Great Britain; in contempt of the King and his Laws, to the example of all others in the like case offending, and against the Peace, &c.

The ATTORNEY GENERAL, in his opening to the Jury, stated, that though this was a case which it was his duty as the Law Officer of the Crown to bring before them, it had not originated with him: It was an Indictment which had been laid before the Grand Jury at the former Term, by a Gentleman* who then

* THOMAS WETMORE, Esquire.



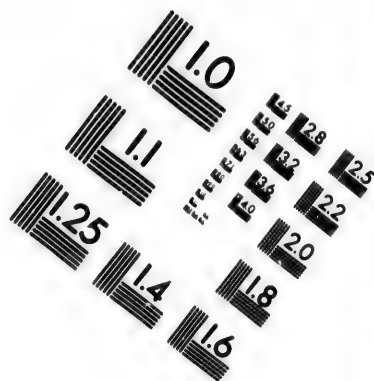
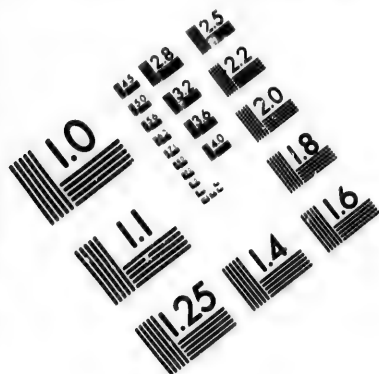
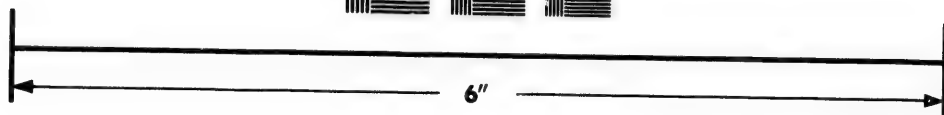
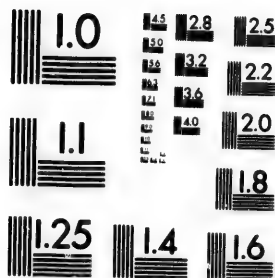


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held the high office, (the duties of which he was at the present discharging) and of whose services and eminent talents the Crown and Country had been deprived by death since the last sitting of this Court: It had been in the ordinary course of that Gentleman's duty; and the Grand Jury of the County having returned it a true bill, the present Defendant John Baker was arraigned, and having pleaded Not Guilty, and traversed the Indictment until the present Term, had now appeared to take his Trial, and the Jury were empanelled to try the issue joined on that Traverse. The Defendant John Baker stood indicted, together with James Bacon and Charles Studson, for having conspired and combined, factiously and seditiously to molest and disturb the Peace and common tranquillity of the Province, to bring into hatred and contempt the King's Government and Laws, and to create false opinions and suspicions of and concerning His Majesty's Royal Power and Prerogative; and in pursuance of this conspiracy and combination, had committed certain specific acts which are set forth in the Indictment. These are called in the language of the Law *overt acts*, and proof of them or any of them might manifest the guilt of the party. That though these acts were so specifically set forth, they did not form the main point of offence. The chief and material fact which they had to try, was whether the Defendant Baker did conspire with Bacon or Studson, with intent to subvert the Government of this Province, and to excite sedition and disaffection among His Majesty's subjects in the Madawaska Settlement so called: and if any one of the overt acts were proved, it would be sufficient to support the charge, if the Jury were, from the circumstances attending it, convinced of the intention of the Defendants. The offence, as laid, amounted only to a Misdemeanor, and was therefore punishable no farther than by a fine and imprisonment; but it was one of a very serious nature, and might be productive of the most grievous consequences. It struck at the root of all society; for if Individuals could be permitted to unite for the purpose of subverting the Jurisdiction, putting down the Laws, and bringing the Government into contempt, without being liable to punishment; and could be justified in so doing, because they took on themselves to deny the authority of the Established Government; all protection for life and property was taken away. The inhabitants were virtually outlawed, and made the prey of every marauder who came with superior force to their own. Had murder or any of the highest crimes been committed by the Defendants; they might escape with impunity, as there could be no law by which they could be tried, no tribunal before which they were compelled to answer. There could be no redress for private wrongs, no remedy for agreements broken, no recovery of debts contracted; and the whole land, instead of being inhabited by an organized society, living under the blessings of a free Constitution, might shortly be overrun by the outcasts of other countries, and the present possessors destroyed or driven out. Such would be the effects of success in Conspiracies like the present. It was not for him (the Attorney General) to anticipate the defence which might be set up on the present occasion: but if the Defendant still persisted in his former declaration, he would probably, instead of disproving, endeavour to justify the acts which he had committed. The Defendant was, he believed, a native of the United States, but it is a well known rule of Law, that an Alien being under the protection of a Government, was subject to its Laws, and owed a local and temporary allegiance so long as he might continue within it. He (the Attorney General) understood the present Defendant justified his conduct on the ground of his being in the Territory of the United States. If the Defendant could make this appear, it might afford him a good defence: or if he could make it appear that he came to the Madawaska Settlement, with the full intention to take up his residence on the territory and within the allegiance of that Government, and had settled, with the full conviction and belief that he was within those limits; although the offence would not be thereby purged unless it were found to be the case, still his criminality would be much lessened, and he would be more entitled to mitigation in any punishment which the

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Court would award him. As to the proof which he (the Attorney General) should bring before them in support of his charge; he thought not only one, but all the overt acts would be proved, and the criminal intention of the party most clearly established, by this and other circumstances which would come out in evidence. The place where the offence is charged to have been committed is the Madawaska settlement, so called, in the Parish of Kent, in the County of York; and it would appear that the inhabitants have ever since the first erection of the Province considered themselves British subjects, and under its Government; that they have always received the protection and been amenable to the provisions of the laws here in force; that they have been enrolled in the Militia, have voted at Elections, and were therefore represented in the Provincial Assembly; and, in fact, exercised all the same privileges as the other people of the Province; that Peace Officers had been appointed there, Magistrates issued their Warrants, and the Processes of the Courts of Justice had been served throughout the whole Madawaska settlement, in the same manner as in any other part of the country, until lately, without any interference or obstruction whatever. It would be proved also, that this very defendant had considered himself living in this Province; had derived protection from the Laws; had in several cases himself applied to Mr. Justice Morehouse for summonses against persons within the settlement, from whom he claimed debts, and was thereby enabled to collect them; and it did not lie with him to deny the obligation of that law, from which he derived aid and protection. He not only, then, enjoyed the benefit of the Institutions which he was endeavouring to destroy, but had even received from the Revenue of the Province, a bounty which the Legislature have bestowed for grain raised on new land within the same; the land on which he raised it being the same where he has now hoisted the flag of the United States, and set at defiance the Laws of the land. It was no question for them or this Court to determine what might eventually be the fate of this country; no decision of theirs could alter or affect the question. There was no doubt it had been claimed by the United States, and that claim resisted by Great Britain; and the two Governments had agreed upon a mode of settling the dispute. This depended on the true construction of a Treaty entered into between Great Britain and the United States; but it would be monstrous to suppose that upon the claim being made, the country was to be withdrawn from the sovereignty of the British Crown, and remain without the protection of any Law, or delivered over to the claimant until the right was ascertained. Should it be decided that this claim shall prevail, there was no doubt the decision would be met by Great Britain with the same spirit that has always actuated her conduct, in the observance of Treaties; but at present nothing was decided. This country was once clearly under the Government of the Crown, and had continued so, uninterruptedly, ever since; and after the erection of this Province, was under its Government; and there was no act whatever, by which the relative state of the parties could as yet be altered or affected. Indeed it was necessary for the interest of both parties that some jurisdiction should be exercised, as without it the Territory could not be preserved. A degree of imaginary importance had been given to this case, by the defendant's having been dignified by a high title to which he had no pretension; and set himself up as the Agent of, and acting under the authority of, a foreign Government; which was not the fact: whatever he and others might have done, was in their individual capacities, and on their own responsibility. The Attorney General then stated to the Jury, that a great deal had been said, a great deal written, and a great deal printed on the present business, but this could have no weight whatever; and the Jury must dismiss it altogether from their minds. It was the great principle of our Laws, the exercise of which we are now vindicating, that every person is presumed innocent until proved guilty; and this proof could only be by evidence given in his presence before the Jury who are to decide on his case. The Jury must, therefore, consider nothing whatever but

the facts which might be proved before them this day. If, after hearing the evidence, they could not in their consciences say whether they were satisfied of the guilt of the defendant, he would be entitled to acquittal: but if the offence, as alleged in the indictment, was proved, they would fearlessly discharge their duty, by pronouncing him guilty. The Attorney General then read some authorities on the general nature of the charge, and the proof necessary to support it, and proceeded to call the witnesses.

George Morehouse was the first witness sworn: his evidence was as follows:—I am a Justice of the Peace for the County of York. I reside in the Parish of Kent, on the River St John, about 30 miles below the Grand Falls. The Madawaska settlers commence a few miles above the Falls, and extend up 40 or 50 miles. I have been settled where I now live six years; but my acquaintance with the Madawaska settlement commenced in 1819.—At this time the inhabitants were principally French. There were a few American citizens. I cannot say whether defendant was there then. His brother Nathan was. I do not recollect the defendant's being there until September, 1822. He and the other Americans had formed a lumbering establishment at the head of the Madawaska settlement, on the east side of the River St. John, by the Merumpticook stream. That part of the country where the French and Americans were, has been invariably under the jurisdiction and Laws of this Province since I knew it. I have been in the constant habit, as a Magistrate, of sending my Writs and Warrants there. No interruption or objection was made to the service of them until last August. Until then it was my belief that all the inhabitants there considered themselves under the jurisdiction of, and subject to the Laws of this Province, both American citizens and the French settlers. When I speak of last August, I mean, that this was the first intimation I had of any objection being made to the exercise of the jurisdiction of this Province there. That intimation was made by a Report or communication from Mr. Rice, that John Baker, the defendant, had been guilty of seditious practices. I forwarded this communication to the Secretary of the Province. A few days after, about the 3d of August, I received written instructions from His Majesty's Attorney General, to proceed to Madawaska and take depositions; and get a copy of the written paper which it was reported the defendant had handed about for signature. I proceeded accordingly to Madawaska on the 7th of August, and arrived at the place where Baker's house is situate, and went into the house of James Bacon, and asked him to let me see the paper that had been handed about for signature. He said he had it not. I then requested Bacon to go with me to Baker's, to look for the paper. He declined going. I then went toward Baker's house, and met him on his mill dam. The mill dam is made across the River Merumpticook. I stated to him that it had been reported to Government, that he and other American citizens residing there, had been guilty of seditious practices; that I was authorised to make inquiry. I told him it was reported that he had drawn up and circulated among the settlers, a paper, the purport of which was, that they were American Citizens, and had bound themselves to resist the execution of the Laws of Great Britain. He neither admitted or denied it, but said that he had been charged with an attempt to stop the Mail, which he said was false. I requested him to shew me the paper which had been handed round for signature. He said he believed it was not in his possession. He did not deny the existence of such a paper. He said he did not know whether it was in his possession or not. He thought Studson had it. I requested him to go to his house and search his papers, perhaps he might find it. We proceeded together towards his house. Between his residence and the mill there is a new house, where ten or twelve Americans were assembled. I did not know them to be Americans, but supposed them to be so. They were not French settlers. When we got there Baker took two or three aside and consulted with them a few minutes. He then came back and said to me "Mr. Morehouse, I have consulted with the Committee,

"and we have determined that you shall not see this paper. We have formerly shewn you papers in similar cases, which has been very prejudicial to us." —I observed when I went there, a flag staff erected on the point of land where Baker lives. The point is formed by the junction of the Merimpticook River with the Saint John. There was then no flag on it: but after coming out of Bacon's, I observed a flag hoisted. A white flag with an American Eagle and semi-circle of Stars red. In the conversation I had with Bacon, he deprecated Baker's practices, and said he would not desist until he brought the Americans there into trouble. I think the persons Baker took aside to consult with, were Bartlett and Savage. After I received the answer before mentioned, I pointed to the flag and asked Baker what that was? He said "the American flag. Mr. Morehouse, did you never see it before? If not, you can see it now." I asked him who placed it there." Bacon was present at the time. I requested him, in His Majesty's name, to pull it down. He said "No, I will not: We have placed it there, and we are determined we will support it, and nothing but a superior force to ourselves shall take it down. We are on American Territory; Great Britain has no jurisdiction here; What we are doing we will be supported in; We have a right to be protected, and will be protected in what we are doing, by our Government." He did not produce or exhibit any authority. I then turned to Bacon and said, "Bacon, you have heard Baker's declaration; Do you mean to support him in it?" He said "Of course I do." I then left them and came away. Baker, about the first of February, 1825, applied to me, as a Magistrate, for summonses against some of the Madawaska settlers, to collect debts. I gave him six summonses against persons all living in the Madawaska settlement. The return made to me was, that the debts were paid when the writs were served. Baker has a considerable improvement and raises more or less grain every year. In the year 1823, I was at the place where he resides. I never knew of his cultivating any other place in the Province. I understood from what passed, that Baker and Bacon both acknowledged they had signed the paper. They spoke of having bound themselves by a written agreement to resist the Laws of England.

The direct examination being closed, the Defendant was informed he might cross-question the witness. He declined doing so, saying, under the circumstances in which he stood there, he did not intend asking any questions. The Court then said he must consider himself on his Trial; and if he did not choose to avail himself of the right which every defendant had of cross-examining the witnesses, it was his own fault; Baker then said he fully understood this, but should follow the course he had stated.

To questions then put by the Court, the witness stated:—The Madawaska settlement proper terminates at the Madawaska River, there are a few miles interval with a few scattering houses. The main settlement then commences about nine miles above the Madawaska, and extends 7 or 8 miles. The Merimpticook is about 18 miles above the Madawaska. This settlement has formerly gone by the name of Chateaugay; latterly it has been called St. Emelie by the French settlers in the settlement. I mean distinctly that the upper as well as lower settlement has been subject to the British Laws. It is at the head of the settlement the Americans reside. The whole settlement has gone by the general name of the Madawaska settlement throughout the country. The name Chateaugay caused some differences among themselves. The Priest changed it to St. Emelie. There has been no distinction in the actual exercise of jurisdiction between the upper and lower part of this settlement. The lower bound of the Parish of Kent is 18 miles below my residence.

Francis Rice sworn. I reside in the Madawaska settlement, at the head of the first part. I am Adjutant of the 4th Battalion York County Militia. The Madawaska settlers are enrolled in this Battalion. I have been in the Court and heard Mr. Morehouse's evidence. I made a Report to him as he has stated. I did not know the facts myself, they were reported to me. I

accompanied Mr. Morehouse on his visit to the settlement on the 7th of August last, and was present at the conversations with Baker and Bacon. The facts all took place as he has stated. I can say nothing more. The Madawaska settlers attend and turn out at the Militia training pretty regularly, both above and below the confluence of the Madawaska.

The French settlers not being able to speak English distinctly, the witness Francis Rice had previously been sworn as Interpreter, and acted as such throughout the Trial.

Abraham Chamberlain sworn. I live in the upper part of the Madawaska settlement, above the Madawaska River. Have resided there four years this summer. Was born at the Bay Chaleur, came from thence to the Madawaska four years ago, and have always lived since in the Madawaska settlement. Charles Studson presented me a paper I think in July last. I don't remember seeing Baker. Bacon and Amery, and some other Americans were present. I was passing by. When they handed me the paper, I asked if any of the French had signed it, they said not yet.

The witness being then asked as to the contents of the paper, and the propriety of such evidence being questioned by the Court, the Attorney General cited the case of *Rex vs. Hunt* and others, 3 Barn and Ald. 566, where it was decided in a trial for Conspiracy, that secondary evidence of the contents of a paper which was in the defendant's possession, was admissible, without producing the original, or giving notice to produce it; and that parol evidence of inscriptions and devices on banners and flags is also admissible.

The question was then put, but the witness could say nothing as to the contents, stating that it was read to him, but being in English he did not understand it. They asked him to sign; but he did not understand for what reason. He wanted to know whether any of the French had signed it. This took place on the point of land near the mill. There was a flag hoisted with an Eagle and Stars on it. They did not say any thing about having signed the paper themselves.

Peter Marque sworn. I live in the St. Emelie settlement, the upper one. Amery, Bacon, and Studson, some time last summer, I cant say what part of it, tried to make me sign a paper. This was at the place where the pole stands. I never understood the purpose for which I was called to sign the paper. I worked eleven days for Baker last year at the time of getting hay.— They told me Chamberlain had signed the paper. I don't remember any more.

Peter Siliste sworn. I was employed last summer to carry the Mail from Madawaska to Lake Timiscouta. As I was taking it up the River, polling in a canoe, I met John Baker coming down the River on a raft. Baker asked me in English "Do you carry the Mail?" I said, Yes. He said he had orders from America not to let the Mail pass that way. I replied that I had no orders to stop there. This was all that passed. This was I think in July.

Joseph Saufaxon sworn. I live in the Madawaska, half a mile below the Green River. The Green River is below the Madawaska. I was born at Madawaska. I bought land from Joseph Sonci. He had a grant from the Government of this Province. I bought it six years ago. I have been a Constable for two years for the Parish of Kent. I was obstructed in my duty of Constable by Baker, Bacon, Bartlett, Savage, Schorley, and Jones. I had an execution from Mr. Morehouse against James Bacon. I asked Bacon if he would come, he said he would not leave the place. Baker said, it is of no use for you to go there, you shall not have the man. Bacon talked about settling it. Baker said "Bacon you must not settle it now, you must settle it another time. I will not allow any officer to go up there." He asked me if I had any authority to go there. I showed him the warrant. He said if it came from the States he would mind it, but it was only from Mr. Morehouse, and he would not mind it. They prevented my taking Bacon, who refused to go. This took place near Baker's mill.

Edward Miller, Esq. sworn. I am High Sheriff of the County of York. I have been so since 1814. I have been acquainted with the Madawaska settle-

ment seven years. I never could make any division in the settlement between the upper and lower. When I first knew it, it extended to seven miles from the Falls. Lately it has come within 3 or 4 miles. I know the Merimpti-cook River. I have been in the habit of serving writs throughout the whole of the settlement, the same as in any other part of my bailiwick. When I first became acquainted with the settlement, I considered the inhabitants as under the jurisdiction and Government of this Province, without any dispute whatever. The distance is so great I have never summoned them to attend as Jurors. It would be so inconvenient to attend. The inhabitants serve in Militia. I never met with any obstruction in the discharge of my duty.

Pete. Fraser, Esq. sworn. I have been an inhabitant of this Province since 1784. I am acquainted with the Madawaska settlement. It is about 7 or 8 years since I was first there, but I have been acquainted with the settlers since 1787. I considered them always under the Government of the Province. The first settler I knew was Captain Duperre, a Captain of the Militia of this Province. The date of his commission was between 1787 and 1790. He resided at the settlement. The settlers have voted at Elections. There was some difficulty at first in their doing so, on account of the oath which was required to be taken, as they were Catholics; but when this was altered, they voted without difficulty. To my own knowledge they voted in 1809, and ever since. I considered the Madawaska settlement as extending from the Great Falls to the Canada line. I have been where Baker lives, and always deemed the part above Madawaska River as in the Madawaska settlement. There is no distinction in this respect between what is above and below that river. The Madawaska settlers are enrolled in the Militia of this Province. In Captain Duperre's time there were two Companies. In 1824 they were formed into a separate Battalion, consisting of five Companies. I am the Major of the Battalion. They turn out very regularly, I never heard them make any objection to training.

Henry G. Clopper sworn. I am Clerk of the Peace and Register of Deeds for the County. I was appointed Clerk in 1823, and Register in 1820. I succeeded my father in both offices. I have discharged the duties since 1820, having acted for him before receiving the appointment myself. Parish Officers were appointed by the Sessions for the Parish of Kent. There was a separate list for the Madawaska District in that Parish. I have been as far up the river as ten miles above the Grand Falls. There are a great many Deeds registered in my office, of lands in Madawaska, where the parties are the Madawaska settlers; some as long since as 25 or 30 years back. As Clerk of the Peace, I received the money given as bounty for Grain raised on new land in this County. In May, 1825, the defendant John Baker applied to me for the bounty for Grain raised by him on new land; he received the bounty from me. The paper now produced by me, is the document under which he became entitled to it. I observed to him that he was an alien, and I was not aware whether he was strictly entitled to it. He said his certificate had passed the Sessions. The paper I now hold is the certificate, and the only one. It has been on file in my office since. The paper was here put in, and read by the Clerk of the Crown, and is as follows:

"I, John Baker, of Kent, do swear, that ninety Bushels of Wheat were really and truly raised on the land occupied by me, and are actually of the Crop of the year 1823 [1822] and that the wood was cut down, burnt or cleared off from the land on which the same was raised, within two years previous to the time that the said crop was taken off; and that they were of the first and only crop of Grain raised on land from which the wood was so cut down, burnt or cleared off as aforesaid.

JOHN BAKER."

Sworn before me at Woodstock, 2d July, 1823.

JOHN BEDELL, Justice of the Peace.

'I verily believe the facts above stated to be just and true.'

JOHN BEDELL, J. P.

I paid him by a check on Mr. Needham—the amount was £4 5s. 3d. This is the order I gave Mr. Needham.

Cross-examined by the Defendant.—Have you got the receipt I gave you for the money? The witness here produced the schedule and signature to it by Baker; and said this is the only receipt he gave me, except the one given to Mr. Needham.

Mark Needham sworn. I remember the circumstance of paying this order. The words 'received payment,' on it, are in my writing. I have no doubt I paid it; but have not now any recollection of the defendant. I considered it paid, and charged Mr. Clopper with it.

George J. Dibblee sworn. I am acquainted with the hand writing of the defendant John Baker. I have seen him write. The signature to the receipt on the order is his hand writing. I have no doubt of it.

Simon Abcar or Libert, sworn. I live two miles below Madawaska River. Have lived there 40 years next month. I moved there from the French Village, about ten miles above Fredericton. I have a grant of my land from this Province. It is the first grant in the Madawaska; and was made about two or three years after I moved up. I live under this Government, and have always lived under it. All the Madawaska settlers live under the same Government. I vote at Elections.—The first time was about eight years ago. Baker came last year to my house, and asked me what time I go to train my Company. I am a Captain of Militia. He said there is not much occasion to train at Madawaska. I enquired the reason. He said nothing. I told him I would go next Saturday; he must be stronger than me to prevent me. I know where Baker lives. He came five or six years ago. He has always lived at the same place. Raised grain there. I believe he cultivated no where else. Baker said "I had better not train," but did not ask me not to train.

George West sworn. I know the defendant Baker. Have known him since 1820, he was then settled at the Bay Chaleur. I saw him next at the Madawaska. It was when Judge Bliss was President. I believe in 1824. I seized three hundred logs from him. I was then a seizing officer. He said he wished to become a British subject, as he had been here the necessary time. He enquired of me what steps it would be necessary for him to take. I told him as far as my information went. This was at the place where he lives. It is called Baker's Mill Stream. He spoke as if he considered himself a resident within this Province, and wished to have all the lenity shown him on that account. It was shewn him. He was allowed to redeem the logs at the rate of 2s. 6d. per thousand feet, counting three logs to a thousand. The logs were seized as cut on Crown Lands without a license. I have seen him since. There was a Warrant of Survey sent to me, to execute of this land where Baker resides. It was in Samuel Nevers' name. Baker himself attended the execution of the warrant, and directed the course of the lines. The privilege was considered Baker's, but taken in Nevers' name, as Baker was not a British subject. I think this was about two years ago.

The evidence on the part of the prosecution having here closed; the defendant was called upon for his defence. He addressed the Court nearly as follows:—

I am a citizen of the United States, and owe allegiance to that country. I have lately received my Deed from the States of Maine and Massachusetts. I hold myself bound to their Courts. I live in American Territory, and hold myself only liable to the Courts of that place, being the County of Penobscot in the State of Maine. I enter on no defence, and call no evidence. I do decline the jurisdiction of this Court.

The Defendant alluded to a letter he had in the course of the trial handed to the Chief Justice, which was delivered to him; and he was informed he might, if he chose, read it as part of his defence, but he declined doing so.

The Attorney General then addressed the Court and said; that as he had in his opening stated generally the nature of the case and evidence; and the Defendant had not made any defence; he did not think it necessary, after so much

time had been taken up, and the evidence so fully gone into, to address the Jury; but would merely read two or three authorities (which he did from Starkie's Evidence, Comyn's Digest, Blackstone's Commentaries, and Archbold's Crim. Pleadings,) and then leave the case in the hands of the Court.

Mr. Justice CHIPMAN charged the Jury. He began by stating the Indictment and Plea, the general nature of the offence, and the proofs requisite to support the charge. He stated that the body of the offence was the conspiracy, the combining and confederating together with the intent laid in the Indictment. In the present case, the intent charged, was to bring into contempt the King's authority, to spread false opinions among his Majesty's subjects as to his power and prerogative over them, and, in fact, completely to unsettle their minds as to their allegiance to the Government under which they lived. This mind and intention must be made manifest by overt acts. It was usual, though held not to be absolutely necessary, to set forth overt acts in the Indictment, but if from the facts proved in evidence, the Jury should be satisfied that the defendant Baker, now on trial, did combine and confederate with one or both of the other defendants named in the Indictment, with the intent imputed to them, that would be sufficient to make up the offence. As the essence of the crime was the combining, two persons at the least must be engaged in it. The Judge then stated that before going into a consideration of the evidence, he would dispose of the ground which the defendant had set up, when called on for his defence; which was that the place where the acts were committed was in the Territory of the United States, and that he, the defendant, was not amenable to the Laws, or subject to the jurisdiction of the Courts of this Province. The Judge then stated that the question as to the national right to this Territory, now well known to be in controversy, is one which this Court is utterly incompetent to enter into, and can have nothing to do with. It is a matter of State to be settled between the two Nations, Great Britain and the United States, to be dealt with by the Governments of the two Countries, and not by this Court. This Court will only inquire whether the place in question is actually in the possession, and under the jurisdiction and Laws of this Province; and if so, the Court will maintain that jurisdiction, and continue the exercise and protection of those Laws, until some Act of the King's Government shall effect a change. There can be no stronger evidence of the possession of country than the free and uncontrolled exercise of a jurisdiction within it; and the Court is bound by its allegiance to the Crown, and its duty to the King's subjects, to act upon this, which it considers as the only principle truly applicable to the case. This principle has already been acted upon in this Province.

The learned Judge then referred to the case of the sloop Falmouth, adjudged in the Court of Vice-Admiralty of this Province many years ago, [1806]. He stated this to have been the case of a seizure by a British Officer, of an American vessel lying in the waters of Passamaquoddy Bay, for lading her cargo within this Province; no foreign vessel at that time being admissible into the ports of these Colonies. The Counsel for the prosecution in that case went at large into the question of right to all the Islands in that Bay, under the provisions of the Treaty of 1783; and contended, that by virtue of the Treaty, all these Islands, including Moose, Dudley, and Frederick Islands, then in the actual possession of the United States, of right belonged to Great Britain; and that no foreign vessel could lawfully lade a cargo in any part of that Bay. But the learned Judge of that Court at that time, now one of the Judges of this Court, (Mr. Justice Botsford,) in pronouncing judgment, would not enter into the question of right to the Islands, which he considered a matter of State for the two Governments to decide upon; but finding the three Islands before named to be under the actual possession and jurisdiction of the United States, he applied the principle of the law of Nations, applicable to a Water Boundary between two different Countries, and directed his attention solely to the point,

—Whether the vessel laded her cargo on the British side of a middle line drawn between these Islands, thus in the possession of the United States, and the British Islands opposite. It thus appears that this doctrine of taking the actual state of things as we find them, and applying the law accordingly, has been already acted upon in this Province, in an instance where it was favourable to Citizens of the United States; and the Court has no hesitation in applying the same doctrine, which it considers the true doctrine, to the present case. It is to be observed, that the defendant, in the present case, has given no evidence whatever of the place in question being in the possession or under the jurisdiction of the United States; that he does not appear to be in any respect an Agent of that Government, or acting under its authority; and that what has been done must be considered as being altogether the acts of unauthorized individuals. The place where the transaction occurred, goes by the general name of the Madawaska settlement; and if this settlement shall appear to be, in point of fact, under the jurisdiction of this Province, the case must receive the same consideration, and the conduct of the defendant be viewed in the same light, as if the acts complained of had been committed in any other part of the Province, one hundred miles further down on the River St John, or even in this town of Fredericton.

The learned Judge then proceeded to read over the whole of the testimony from his notes, commenting upon the several parts of it as he went on. He considered the overt acts as to hoisting the Flag of the United States, with the express intention of subverting British authority, as most distinctly and fully proved, and asked what more unequivocal indication there could be, of an intention to bring the King's Government into contempt, and of unsettling the administration of the Laws of the Province, than the erecting of a foreign Standard with this declared purpose. With respect to the transaction with the Postman, he directed the Jury, that if they considered the act of the defendant in this instance to have proceeded from the combination and confederacy to subvert the King's authority, the defendant was properly charged with them under this Indictment; and that in forming their judgment of this and all the other facts detailed in evidence, they should take into view all the coincidences of time, of place, and of action, in determining the character of the several transactions. With respect to the written agreement by which they bound themselves to resist the British Laws, he thought that was sufficiently proved with regard to the American citizens; but it was not made out in proof that this was the same paper which was handed to the French settlers. But the learned Judge said that he could not admit of any distinction in this respect between aliens being under the jurisdiction and protection of the British Laws, and natural born subjects. The former owe a local allegiance, and what would be a breach of the Laws by the one, would be equally so by the other.

The learned Judge, in closing, stated, that if in determining the present case, this Court was undertaking to enter upon a question of a conflict of rights between the two nations, it might be disposed to approach it with a degree of trepidation. But this case was altogether unembarrassed by any such considerations. It presented a chain of evidence of clear possession and undisturbed jurisdiction on the part of this Province, from the period of its first erection to the present time; a space of more than forty years. One of the oldest inhabitants in the Madawaska settlement had proved that he removed thither from the lower part of this Province, forty years ago; that he and all the settlers there, always considered themselves as living under this Government. It is also proved that these inhabitants have received grants of land from this Government; and have from the beginning been enrolled in the Militia; that they have voted at Elections for the County of York; have applied to the Provincial Courts for redress in all suits at Law; and have uniformly exercised all the privileges, and been subject to all the duties of other inhabitants of the Province; excepting only that the Sheriff states, that he

has not summoned them to attend on Juries at Fredericton, by reason of their great distance; but he expressly declares that he has always been in the habit of serving writs throughout the whole of that settlement, as much as in any other part of his bailiwick. It appears also, that the defendant Baker considered himself as living within the territory, and under the jurisdiction of this Province; that he applied to Mr. Morehouse, the provincial Magistrate, for processes to recover his debts from inhabitants in the Madawaska settlement; that he received the provincial bounty for grain raised on new land, which there can be no question is the land on which he now resides; and this on his own affidavit, stating himself to be John Baker, of the parish of Kent. It further appears that he attended a provincial Surveyor in laying out this very land, for which a warrant of survey, under the authority of the Province, was in a course of execution; giving directions as to the course of the lines, the grant being intended for the benefit of Baker, although it was to be taken in the name of Nevers, a British subject. Baker himself also had an intention of being naturalized, and stated to one of the witnesses, Mr. George West, that he had resided the necessary time, and wished to know what other steps were necessary for this purpose; this conversation taking place on the spot where he lived, at the head of the Madawaska settlement, and at a time when logs cut by him had been seized as being cut on crown lands without license, and Baker claimed to be dealt favourably with by reason of his residence within the Province, and his intention to become naturalized. The learned Judge also stated, that it appeared from the evidence, that there was no line of division to be drawn between any parts of that whole settlement, as to the possession and exercise of jurisdiction by this Province; that he could not imagine any principle upon which any such line of division could be made; that one of the witnesses spoke of the settlement having, when he first knew it, commenced seven miles above the Great Falls; that it had since extended downwards to within two or three miles of these Falls. It had also been gradually extending upwards, and all the inhabitants in every part of it were equally under the jurisdiction of this Province, and entitled to the benefit and protection of its laws: and if they were to be transferred from this jurisdiction and protection, it must be by some act of the King's Government, competent for that purpose.

The learned Judge with these observations left the case to the Jury, directing them to consider it in the same light, and to give the defendant the benefit of the same considerations that they would in the case of any other inhabitant of the Province.

The Jury then retired from the box; and after about an hour's deliberation, returned into Court with a Verdict of GUILTY.

The Defendant was then required to enter into recognizance to appear on Monday next, to receive the Sentence of the Court. The same bail was accepted as before, in the same amount.

The Attorney General stated to the Court, that he should enter a *nolle prosequi*, on the ex-officio information which had been filed against the defendant; and also on the Indictment which had been found against John Baker and six others, for a riot; so far as regarded the present defendant.

The witnesses were informed their further attendance would not be required.

Monday, 12th May, 1838.

The Defendant, JOHN BAKER, appearing to receive Sentence, the ATTORNEY GENERAL addressed the Court as follows:

May it please Your Honors;

JOHN BAKER, the defendant at the bar, having been indicted and found guilty of a conspiracy to excite sedition and disaffection to the Government of this Province, to resist the execution of the Laws, and to bring into contempt the Royal Power and Prerogative within the Territory lying near the Madawaska River, under the actual Sovereignty of His Majesty, and within the jurisdiction of this Court; it is my imperative duty to move that judgment may be passed upon him for this offence.

It is not my aim, in any thing I may address to your Honors, to call for any severer punishment than the Court may deem absolutely necessary. Indeed it is rather with a contrary intention I have now risen. That the defendant should be punished is necessary; his offence requires it; he may also be taught subjection to the laws under which he himself has sought and found protection and relief, so long as he remains within their reach. It is further necessary, that the others of whom he appears leader, may learn from this example, that they will not be permitted, with impunity, to set themselves in array against the Government; but more than all, it is requisite to satisfy the peaceable and honest settlers at the Madawaska that they will be protected in their persons and properties, so long as His Majesty acknowledges them as subjects resident within his dominions.

The defendant must have understanding sufficient to see what consequences will inevitably follow from acts such as have been proved against him, unless checked in time. He cannot, indeed I think no person, of whatever country he may be, could entertain a doubt of the propriety of the verdict: the evidence was irresistible, and the full consciousness of what this would be, has, I conceive, influenced the defendant in the course he has adopted; he denied the jurisdiction of the Court which he knew must convict him.

He asserts, however, that to acknowledge it, would be contrary to the allegiance he owes to the United States, and the Territory where the acts were done, to be within the jurisdiction of the courts of Maine.

That there may not be the slightest misapprehension of the principles on which this prosecution is conducted, I distinctly admit, that for whatever crime he may have committed in any place under the jurisdiction and sovereignty of the United States, the defendant cannot be called to account here; not though it were a personal injury of the highest nature done to a British subject; not though he himself were a British subject; neither, indeed, had he perpetrated the crime here and escaped thither, could he be arrested and brought back by any authority of this Province; when once within the limits of their jurisdiction, he is safe from all power but theirs. If the acts were committed out of this jurisdiction, it is matter of defence on the trial, of which a defendant may avail himself without being involved in any difficulty as to his allegiance. This question may arise in every country, but evidence such as was given in this case, can never be made null by the mere protestation of the accused. I did not, it is true, lay before this Court the treaties between Great Britain and the United States; and call on your honors to mark the boundary on the map; this is not the tribunal before which the parties have come to have this adjusted, and by whose decision they agree to be bound. But I did bring forward many witnesses of unexceptionable character, from their situations most cognizant of the facts, who proved an uninterrupted exclusive exercise of sovereignty and jurisdiction over the Madawaska settlement.

The United States claim the territory, but it has never actually been withdrawn from the King's dominion; the claim is resisted: each government asserts its right, and each admits the possibility of a decision adverse to its claim. It is submitted to a third Power; who certainly will not be influenced by any unauthorized act of either party, in determining the meaning of a treaty, nearly half a century old, referring to the natural features of the country. While this is pending, are both governments to exercise a concurrent jurisdiction over the territory? or is there to be none? or is it to be that of the United States? If the first is the correct rule, we should still claim the right to punish offences, particularly such as were calculated to oust our jurisdiction altogether: but the idea of two distinct sovereignties, one Monarchical, the other Republican: two sets of laws, one administered at Fredericton, the other at Penobscot; peaceably binding the same place at the same time, is too preposterous to be seriously maintained. No civilized nations can allow that a country lying between them, and claimed by both, should be without rule or law; where every crime might be committed with impunity; and which would

afford a sanctuary for the criminals who might escape thither from either; for no legal warrant could there arrest them. To admit such a principle, would be at once to say, that every act of sovereignty and jurisdiction which has been exercised over the various places left in dispute by the Treaty of 1783, is unauthorised and void, so long as the true bounds remain undefined. I have said thus much on this point, because, though the defendant does not rest on it, he must I conceive, to make out his excuse, be driven to adopt it; for what possible reason can be urged for now transferring the jurisdiction to the State of Maine? Is there any argument in support of her claim, which will not with at least equal force maintain that of Great Britain? Or is it to be left to every accused person to select the jurisdiction he likes best: at one time that of New Brunswick, another, Maine? His Honour Mr. Justice CHIPMAN has already adverted to a case where the Courts of this Province gave to American citizens the benefit of this doctrine; but have not the United States practically upheld the same?

Before the true St. Croix was ascertained, there was a large territory in dispute, part under the sovereignty of one government, and part under that of the other; but was it attempted to subvert the jurisdiction of this Province over St. Andrews and a large part of Charlotte County, or that of the United States over the country lying to the westward of the Scudiac, or between the branches of that river?

The defendant perhaps relies on his character of an American citizen for a justification.

If I could for a moment believe he was actuated by any conscientious feeling of patriotism; that his natural allegiance warmed his breast and stirred him up to defy this government; however I might deprecate his acts, I might in some sort, respect his motives; but the whole tenor of his conduct is at variance with such fine feelings. He may seek shelter under the cloak of patriotism, but the sacred name of country should not be polluted, in order to furnish excuses for acts and actors like the defendants in this Indictment; particularly the one now here. The easy tenure of the land where he has seated himself; the free range through the forest for supply to his mill; escape from arrest for the large sums he owes to British subjects; the popular applause he may hope to maintain among a portion of his countrymen, will I think be found the moving springs; or, it may be a worse motive; such as was alluded to by one of his own confederates; that restless spirit which actuates unprincipled men of desperate fortunes to long for troublesome times. The circumstance of his being an American born, cannot alter the case; as he intended to be, and considered himself in New Brunswick; he had been some time at the Bay of Chaleur; after he moved to the Madawaska, was desirous of becoming naturalized as a British subject; inquired the requisite steps; (and it could be proved, if one of the witnesses had not been absent from the Province, was ready to take the most serious one;) he claimed and enjoyed the benefit of such a disposition; held himself under our laws; applied to them for the recovery of his own rights; and, in short, was as much a subject, for the time, as if he had been born and lived in this place; swore to the land as part of New Brunswick, after cultivating it as such; and assisted in running out the lines under a warrant of survey from His Excellency the Lieutenant Governor, in order that a grant might pass, which though not in his name, the Surveyor says would have been for his benefit: If then the jurisdiction is to be determined by the national character of the defendant's possession; are not the acts which have been proved unequivocal marks of its being British rather than American? He sees it in this light himself; he fixes a time for changing it; hoists the American flag; and he and his confederates pour out their libations under it; and without the least authority from their Government, utter a new act of independence for Madawaska, and bind themselves to give defiance to Great Britain, declaring they should be supported because they ought to be. Is not this a plain confession that the British Government was in force, and some

act was required to determine it? Can the United States allow the validity of acts like these, or will they upon principle suffer the question of sovereignty and jurisdiction to depend on the banner a few unauthorized individuals may choose to display, or the document they may choose to subscribe? Another person may buy the land from the defendant to-morrow, and make proclamation for re-establishing the British laws under the ensign of England. The statements of the witnesses must be so fully in the recollection of your Honors, that it will not be necessary for me to repeat them; there never was perhaps a more wanton and unprovoked outrage; or a conspiracy more deliberately planned and acted on. Whatever consequences may ensue, I feel fully convinced, and were it with my last breath I should say so, that it was necessary to carry on this prosecution. If this had passed without notice, the defendants would have persisted, and urged to the Madawaska settlers the timidity or imbecility of this Government, as an inducement for their putting themselves under the protection of a state more able or willing to defend them. There was no alternative between bringing this man to trial, and yielding up, in effect, the sovereignty, jurisdiction and possession of the Madawaska. We need not therefore be surprised at the protest against the power of this Court, and the clamour raised in his behalf. What has passed I hope will prevent a recurrence: the defendant is a man of some years, and has shown a sense of propriety by his respectful demeanour towards the Court. I should urge him to reflect on his conduct. I ask not any severe punishment; the defendant has already suffered a long imprisonment; and has come some distance to attend the trial; he was discharged also from a civil suit under the confined debtors act; I must therefore suppose him unable to pay a very large fine. I have already used the discretion vested in me, in his favour, by discontinuing the other prosecutions against him, and I should be glad to show him that the exercise of our laws is characterised by mildness as well as firmness.

The Defendant being asked whether he had any thing to say in mitigation, addressed the Court to the following effect:—

That having been brought here and made amenable to the jurisdiction of this Court, he was bound to submit; he had nothing particular to urge, and no affidavit to produce; there were circumstances, which if he could be able to bring forward, might be of use, but as he was not prepared with all, he considered it not worth while to adduce any proof; he submitted himself to the consideration of the Court.

His Honor Mr. Justice BLISS then proceeded to pass sentence to the following effect:—

That the Defendant, *John Baker*, had been indicted by the Grand Jury of the County of York, for a seditious conspiracy, committed by him and others within the Jurisdiction of this Court; to which he had pleaded not guilty; alleging at the same time, that he did not consider himself amenable to the process of the Court, being a citizen of the United States, and that the offence charged was committed in their territory; but the Court could not admit this to be the case, it appearing clearly that the Madawaska settlement, where the offence was committed, had been from the first erection of the Province hitherto, under our laws and subject to our jurisdiction; and after a very fair and full investigation of the case, he, the defendant, had been convicted by a Jury of the country, and it now remained for the Court to pass their sentence upon him for this offence: in doing which their object was to treat him with that lenity which, so far as was consistent with the ends of justice, was uniformly extended to his Majesty's subjects; and although the Court considered the crime of which the defendant had been found guilty, of a very aggravated nature, they have had regard to his previous long imprisonment; and their object being to secure the future peace of the country, and not to pass a vindictive sentence personally against himself, they had awarded the punishment accordingly; and did sentence him to be imprisoned in the common gaol of the County of York, for the term of two calendar months, and to pay a fine of £25 to the King, and remain committed until the fine be paid.

NO. III.



[From the Fredericton Royal Gazette, October 19, 1831.]

REPORT

Of the Trial of BARNABAS HANNAWELL, JESSE WHEELOCK, and DANIEL SAVAGE, before the Supreme Court of the Province of New-Brunswick, at Fredericton, on Saturday the 15th October, 1831; being in Michaelmas Term, in the second year of the Reign of King WILLIAM the Fourth.

SUPREME COURT.

Michaelmas Term, 2d William IV.

On Thursday the 15th October, in this Term, the Grand Jury for the County of York presented a Bill of Indictment against Barnabas Hannawell, John Baker, Walter Powers, Jesse Wheelock, Daniel Savage, Randal Harford, John Harford, Nathaniel Bartlett, Augustin Webster, and Amos Mattocks, as follows.

SUPREME COURT.

Of Michaelmas Term, in the second year of the Reign of King WILLIAM the Fourth.

York, to-wit.

1st. The Jurors for our Lord the King, upon their oath, present, that Barnabas Hannawell, late of the Parish of Kent, in the said County of York, labourer, John Baker, late of the same place, labourer, Walter Powers, late of the same place, labourer, Jesse Wheelock, late of the same place, labourer, Daniel Savage, late of the same place, labourer, Randal Harford, late of the same place, labourer, John Harford, late of the same place, labourer, Nathaniel Bartlett, late of the same place, labourer, Augustin Webster, late of the same place, labourer, and Amos Mattocks, late of the same place, labourer, being pernicious and seditious men, and greatly disaffected to our Lord the now King and his government, within this His Majesty's Province; and also of unquiet and turbulent dispositions, and devising, practising, and falsely, unlawfully, unjustly, maliciously, turbulently and seditiously intending to disturb, molest, and disquiet the peace of our said Lord the now King, and the public tranquillity of this His Majesty's Province of New-Brunswick; and, as much as in them lay, to move, stir up, and procure sedition within the same; and to subvert His said Majesty's authority within the same, and to set up and establish a Foreign Power and dominion in place thereof; they the said Barnabas Hannawell, John Baker, Walter Powers, Jesse Wheelock, Daniel Savage, Randal Harford, John Harford, Nathaniel Bartlett, Augustin Webster, and Amos Mattocks, to fulfil, perfect, and bring to effect, their most wicked, detestable and seditious intentions aforesaid, on the twentieth day of August, in the second year of the reign of His Majesty the now King, William the Fourth, by the Grace of God of the United Kingdom of Great Britain and Ireland, King, Defender of the Faith, &c.; and at divers other days and times, as well before as after, with force and arms, &c., at the Parish of Kent, in the said County of York, unlawfully, unjustly, maliciously and seditiously did assemble,

meet, conspire and confederate themselves together, and with divers other evil disposed subjects of our said Lord the King, to the Jurors aforesaid unknown, and with the same did treat of and concerning the executing, perfecting, and bringing to effect their wicked and seditious compassings, imaginations, and purposes aforesaid.

2d. And the Jurors aforesaid, on their oath aforesaid, do further present that the said Barnabas Hannawell, John Baker, Walter Powers, Jesse Wheelock, Daniel Savage, Randal Harford, John Harford, Nathaniel Bartlett, Augustin Webster, and Amos Mattocks, further to fulfil and bring into effect their most wicked, detestable, and seditious devices, practices and intentions aforesaid, then and there, to-wit, on the twentieth day of August aforesaid, in the second year of the reign of our said Lord the now King aforesaid, and at divers other days and times, as well before as after, at the Parish aforesaid, in the County aforesaid, with force and arms, &c., unlawfully, maliciously, and seditiously, did consult, counsel, conspire, and confederate to disturb the public tranquillity of the Province, then and there under the pretended authority of a certain instrument or paper, purporting, as they declared, to be an act of the Legislature of a foreign government called the State of Maine, and one of the United States of America, and of a certain other instrument or paper, in writing, purporting to be as they declared, a warrant under the hand and seal of a person by the name of William D. Williamson, as a Justice of the Peace for the said foreign government of the said State of Maine, did elect and choose from among themselves the said Barnabas Hannawell, John Baker, Walter Powers, Jesse Wheelock, Daniel Savage, Randal Harford, John Harford, Nathaniel Bartlett, Augustin Webster, and Amos Mattocks, so being then and there unlawfully, unjustly, maliciously, and seditiously assembled together, certain persons to be and act as officers under the said foreign government, and to execute and perform the duties thereof as such officers under the said foreign government of the said State of Maine, there to-wit: in the said Parish of Kent, in the said County of York, to-wit: the said Barnabas Hannawell to a certain office under the title or denomination of Moderator; the said Jesse Wheelock to a certain office under the title or denomination of Town Clerk; the said Amos Mattocks, Daniel Savage, and John Harford respectively, to offices under the title and denomination of Select Men; and the said Randal Harford and Barnabas Hannawell, respectively, to office under the title and denomination of Constables; and did then and there unlawfully, unjustly, maliciously, and seditiously administer or cause to be administered to the said Amos Mattocks, Daniel Savage, and John Harford, as such Select Men, a certain oath of office; which same oath of office was then and there by the said Amos Mattocks, Daniel Savage, and John Harford, received and taken.

3d. And the Jurors aforesaid, on their oath aforesaid, do further present that the said Barnabas Hannawell, John Baker, Walter Powers, Jesse Wheelock, Daniel Savage, Randal Harford, John Harford, Nathaniel Bartlett, Augustin Webster, and Amos Mattocks, further to fulfil and bring into effect their most wicked, detestable and seditious devices, practices and intentions aforesaid, then and there to-wit, on the twentieth day of August aforesaid, in the second year of the Reign of our said Lord the now King, and at divers other days and times, as well before as after, at the Parish aforesaid, in the County aforesaid, with force and arms, &c., unlawfully, maliciously and seditiously did consult, counsel, conspire and confederate, to disturb the public tranquillity of the Province, and then and there giving out and pretending to act by authority of a foreign government, to-wit: the State of Maine, one of the United States of America, and of one William D. Williamson, as a Justice of the Peace of and for the said foreign government, did elect and choose from among themselves, the said Barnabas Hannawell, John Baker, Walter Powers, Jesse Wheelock, Daniel Savage, Randal Harford, John Harford, Nathaniel Bartlett, Augustin Webster, and Amos Mattocks, so being then and there unlawfully, unjustly, maliciously and seditiously assembled together, certain

persons to be and act as officers, under the said foreign government, and to exercise and perform the duties thereof under the said foreign government, there, to-wit: in the said Parish of Kent, in the said County of York, to-wit: —the said Barnabas Hannawell, to be a certain officer under the said foreign government, by the title of Moderator; the said Jesse Wheelock, to be a certain officer under the said foreign government, by the title of Town Clerk; the said Amos Mattocks, Daniel Savage, and John Harford, respectively, to be officers under the said foreign government, by the title of Select-Men; and the said Randal Harford and Barnabas Hannawell to be officers under the said foreign government, by the title of Constables; and did then and there unlawfully, unjustly, maliciously and seditiously administer or cause to be administered to the said Amos Mattocks, Daniel Savage, and John Harford, as such Select-Men, an oath of office, which same oath of office was then and there by the said Amos Mattocks, Daniel Savage, and John Harford, received and taken.

4th. And the Jurors aforesaid, on their oath aforesaid, do further present, that the said Barnabas Hannawell, John Baker, Walter Powers, Jesse Wheelock, Daniel Savage, Randal Harford, John Harford, Nathaniel Bartlett, Augustin Webster, and Amos Mattocks, further to fulfil and bring into effect their most wicked and seditious devices, practices, and intentions aforesaid, then and there, to-wit, on the twentieth day of August aforesaid, in the said second year of the reign of our said Lord the now King, and at divers other days and times, as well before as after, at the Parish aforesaid, in the County aforesaid, with force and arms, &c., unlawfully, maliciously and seditiously consult, conspire and confederate to make disturbance, and did *incite, invite*, and endeavour to *persuade and induce* the liege subjects of our said Lord the King, then and there being, to take part with and join them the said Barnabas Hannawell, John Baker, Walter Powers, Jesse Wheelock, Daniel Savage, Randal Harford, John Harford, Nathaniel Bartlett, Augustin Webster, and Amos Mattocks, in electing and choosing certain persons to be and act as certain officers, under the authority of the said foreign government of the State of Maine, there at the said Parish of Kent, in the said County of York.

5th. And the Jurors aforesaid, on their oath aforesaid, do further present, that the said Barnabas Hannawell, John Baker, Walter Powers, Jesse Wheelock, Daniel Savage, Randal Harford, John Harford, Nathaniel Bartlett, Augustin Webster, Amos Mattocks, further to fulfil and bring into effect their most wicked and seditious devices, practices and instructions aforesaid, then and there, to-wit, on the twentieth day of August aforesaid, in the second year of the reign of our said Lord the now King, and on divers days and times as well before as after, at the Parish aforesaid, in the County aforesaid, with force and arms, &c., did unlawfully, maliciously and seditiously consult, conspire and confederate to make disturbance, and did endeavour to persuade and induce divers of the liege subjects of our said Lord the now King, then and there being, to depart from and violate the allegiance which they the said liege subjects owed to our said Lord the King, and to acknowledge themselves to be citizens and subjects of a foreign Government, to-wit: the Government of the State of Maine, one of the United States of America.

6th. And the Jurors aforesaid, on their oath aforesaid, do further present, that the said Barnabas Hannawell, John Baker, Walter Powers, Jesse Wheelock, Daniel Savage, Randal Harford, John Harford, Nathaniel Bartlett, Augustin Webster, and Amos Mattocks, further to fulfil and bring into effect their most wicked and seditious devices, practices and intentions aforesaid, then and there, to-wit, on the twentieth day of August aforesaid, in the said second year of the Reign of our said Lord the now King, and at divers other days and times, as well before as after, at the Parish aforesaid, in the County aforesaid, with force and arms, &c., unlawfully, maliciously and seditiously, did assemble, meet, conspire, and confederate themselves together, to molest and disturb the peace and common tranquillity of this Province, and to bring into

hatred and contempt our said Lord the King and His Government, and create false opinions and suspicions in the minds of the subjects of our said Lord the King, of and concerning the Government of our said Lord the King, and of the Royal Power, Prerogative and Sovereignty of our said Lord the King, within this Province, in very great contempt to our said Lord the King and to His Laws, the evil example of all others in the like case offending, and against the peace of our said Lord the King, His Crown and dignity.

CHARLES J. PETERS, Attorney General.

On the motion of the Attorney General, the Defendants, Barnabas Hannawell, Jesse Wheelock, and Daniel Savage, who had been arrested and were then in confinement in the Gaol at Fredericton, for want of Bail, were brought into Court, and arraigned on the Indictment: to which they severally pleaded not guilty, and said they were ready for their trial. The expediency of entering into recognizance to appear at the next Term and traverse the Indictment, being stated to the Defendants, they retired for a few minutes into an adjoining room to consult together, and on their return, the defendant Barnabas Hannawell said, that as he did not think that it would be in their power to procure bail, they were desirous the trial should proceed without delay. The Court thereupon appointed the ensuing Saturday for the trial, at the same time intimating that if the Defendants were desirous to have the trial postponed, it would be quite open to them to do so at any time before the Jury were impannelled. They then asked what security would be required, and the Court determined that the recognizance should be themselves in £100 each, and two sureties in £50 each.

Saturday, 15th October, 1831.

PRESENT.

His Honor The CHIEF JUSTICE,

Mr. Justice BLISS,

Mr. Justice BOTSFORD,

Mr. Justice CHIPMAN.

On motion of the Attorney General, the said Defendants, Barnabas Hannawell, Jesse Wheelock, and Daniel Savage, were brought into Court by the Sheriff—and being asked by the Court whether they were ready for their trial, replied in the affirmative.

The Attorney General said that the Defendants being indicted for a misdemeanor only, it was not according to the ordinary practice that their trials should take place at the same Term; and that for many reasons he thought it desirable that the present case should stand over until the next Term; that it was the wish of the Crown Officers to postpone it, but, that as the Defendants were in custody, he was willing to comply with their request and proceed immediately if they persisted in desiring it.

The Defendants again said, that as they did not think they could procure the requisite security, they wished the trial to proceed.

The Attorney General then moved for trial, and intimated to the Defendants, who conducted their own defence without the aid of Counsel, that they might challenge any of the Jurors as they were called, for cause.

Donald McLeod, one of the Jurors called, was objected to, and thereupon set aside.

No other objection was made, and the following Jurors were called and sworn:—

George Nevers,
James Tibbits,
James Cameron,
William Miller,

John Russell,
Holland Esty,
Asa Coy,
Thomas Gardiner,

Robert Gowan,
William J. Esty,
Thomas Stewart,
John Payson.

The Clerk of the Crown read the Indictment and stated the pleas and issues joined thereon.

The ATTORNEY GENERAL opened the case on the part of the prosecution, and stated briefly and generally the substance of the indictment and nature of the charge, and the evidence requisite to support it, that the main allegation was that of conspiring and confederating together to subvert His Majesty's Government in this Province. The defendants and others, in pursuance of this design, had been guilty of various acts of sedition, particularly detailed in the indictment, which would be fully proved by the witnesses he should call. This was an ordinary indictment found by the Grand Jury; he should not anticipate the grounds of defence, but leave the defendants to show, if they could, any sufficient justification for their conduct. It would be the duty of the Jury to decide on the facts under the law, which would be stated to them by the Court.

The ATTORNEY GENERAL then proceeded to call the witnesses.

Leonard R. Coombes, sworn and examined.—I know the defendants; have known defendant Wheelock ten or twelve years; have seen Hannawell some years ago, but had no particular acquaintance with him till I went to Madawaska; never saw Savage till I went there. Hannawell lives near John Baker's mill, in the Madawaska settlement; Wheelock lives near the mouth of the river St. Francis; Savage lives on the Fish River, which is a large stream making in from the west side of the main river; I reside in the Madawaska settlement, on the east side of the river St. John, about 12 miles above the Grand Falls; have lived there nearly two years, and am a Captain in the Militia of this Province. Having heard that there was a notice posted up in the settlement of a meeting to be held at Captain Peter Lizotte's on the 20th August last, I set off on the morning of that day to go there: went up by water, and stopped at Firman Thibideau's on the way, where I saw John Baker, Amos Mattocks, John Harford, and Randal Harford, and went in company with them to Captain Lizotte's. The three defendants were there, also Walter Powers and several other persons, among them Mr. Rice and Mr. Beckwith, and some of the French inhabitants. The intent of the meeting, as I understood, and as was declared by some of the persons present, was to elect town officers for Madawaska, under an act of the State of Maine. Captain Lizotte called the Frenchmen out of the door, and spoke to them in French, which I do not understand; on his return I heard Walter Powers say, let us go into the field and see what we can do there: he then went out to a cart which stood in a field near the house, and the defendants and the other Americans went with him; Mr. Rice and I also went. Walter Powers commenced by taking out a book; he said he had not his spectacles, and requested one of the others, I think it was Webster, to read the corporation act. I asked Powers by what authority he was going to read that act; he replied under the authority of a warrant he had: I asked him to show me the warrant; he said he would when he had read the act; I replied, that he should not read the act until he had shewn me the warrant; he hesitated about producing it, but did so on my pledging my honor to return it: he then shewed it to me, and I read it and handed it to Mr. Rice to look at it. After seeing the contents of the warrant, I told Powers that this was a part of the Province of New Brunswick, and that, at all events, the British law was in force there; that the laws of New Brunswick were those we depended on for our rights in any case; that if he should proceed, I should take the earliest opportunity of reporting it, and have them dealt with according to law; that they might depend upon it the British Government would not allow such acts to be carried on in that part of the country; that we were British subjects, and could not allow such proceedings. They went on to read the act, and then the warrant; I think Webster read them; they were read under Powers' order. They then proceeded to elect a Moderator; the election was by ballot, each writing on a piece of paper, folding it up, and throwing it into a hat; the defendant, Barnabas Hannawell, was declared by Powers to be chosen Moderator, and then took charge

of the meeting in that capacity. I then told Hannawell he had better desist, as the British Government would proceed against him; his reply was, I am willing every man should be persuaded in his own mind: he then said he was elected into an office, and his Government would support him in it. They next elected a Town Clerk, Select-men, and Constables: John Harford, Daniel Savage and Amos Matlocks were chosen select-men; Jesse Wheelock, town clerk; Randal Harford and Barnabas Hannawell, constables. Paul Crock, otherwise called Paul Cere, one of the French, was the first chosen a select-man; I advised him not to act, and he thereupon declined. Romaine Micheau, another Frenchman, was chosen a constable, but he also, by my advice declined. They then proceeded to swear in the select-men. The same persons being appointed Assessors, I cannot say whether the oath was as assessors or select-men; the oath was read from a book, or a paper in a book; the form was, holding up their right hands and bowing their heads. A conversation then took place between John Baker and myself, in the presence of the party, about the Governments; Baker said their government had taken a stand and were not going to deviate from it; I understood he meant the State of Maine. He expressly denied the authority of the British Government, and said they considered themselves in the County of Penobscot, in the State of Maine, one of the United States of America. Baker seemed the most zealous of the whole; it is the same Baker who was tried here before; he was the chief spokesman, but refused at that time to take any office; the other Americans seemed to acquiesce, but said little; Baker and Powers were the warmest; the defendant Hannawell said little or nothing till he was chosen moderator; he said he would take no part till he was put into office that would indemnify him. About half the number present were of the French inhabitants: Baker tried hard to persuade them to vote, and I tried hard to dissuade them; I think it was the interference of Mr. Rice and myself that prevented the French from voting. Peter Lizotte's house is on the western side of the river, about two miles below the chapel, and about 30 miles above the Great Falls: he is a Captain of the Militia of this Province: I have done duty with him: he is an old man, of appearance upwards of 70. Baker lives on a point of land called Baker's Point, near the junction of another river, on which he has a mill; he is on the east side of the River St. John.

The witness was then cross-examined by the defendant Hannawell—He was asked what Mr. Maclauchlan, the British Agent, had told him about the line. [The question was objected to by the Attorney General, who stated that he intended calling Mr. Maclauchlan as a witness, and the defendants would have an opportunity of examining him, and might, if they pleased, re-call Mr. Coombes after Mr. Maclauchlan was examined.] To other questions put by the defendant, the witness stated that he never knew of any of the defendants present ever meddling or interfering with the difficulties existing before this; did not hear them using any solicitations to the French, neither did they interfere with his protesting against the meeting: witness said he did not address himself to them; Walter Powers was the only person who opposed his making a protest; he was the only one who spoke till Hannawell was chosen moderator: Hannawell never opposed witness in saying what he liked to the French or English, neither did the other two defendants; never knew any of the defendants resisting the execution of the British or Provincial laws, except in this instance.

To a question from the Court, witness said he did not read the act till after the meeting was over: to one put by a Juror, he said it was Hannawell who called them to come forward and take the oath, which was administered by Hannawell or Wheelock, but which of the two witness cannot say.

Francis Rice, Esq. sworn.—I know the defendants; have known Savage four or five years; Hannawell better than three; Wheelock about three years. —About 12th August, received information from Mr. Obert that there was to be a meeting at Captain Lizotte's house on the 20th: was told there was a

notice posted up at the house of Baptist Soussé, and went there and saw it. I went to the meeting at Peter Lizotte's on the 20th August: the defendants were all there; also Bartlett, John Baker, John Harford, Webster, and Mattocks; also a number of French, about half. I understood the object was to appoint town officers for Madawaska, as belonging to the State of Maine, one of the United States of America. Walter Powers declared the object of the meeting, and took the most active part. Captain Lizotte asked me, in the presence of the defendants, whether I thought there could be any harm in his allowing the town meeting to be held in his house? I replied, that as a British subject I should not allow it in my house; but that he was master there, and might do as he thought proper. Captain Lizotte then left the room, and I concluded, from what afterwards took place, that he had objected to the meeting: they then assembled in a field near the house. Capt. Coombes, who was present, asked Powers for his authority: Powers handed him a paper, which he read and handed to me. I asked Powers for a copy of the warrant so shewn; he said he did not know what right I had to demand a copy: I told him I would keep the original and send it on: he then concluded to let me have a copy, which I got, and sent to Mr. MacLauchlan. I am a Justice of the Peace for the County of York, and in that capacity protested against the meeting in the King's name, and required them to desist. Finding that the Americans were determined to go on, I left them and went home. The place where they met is in the Parish of Kent, in the County of York: Lizotte is a Captain of the Militia of the Province: I am a Captain and Adjutant, and have acted with him. John Baker is the same who was tried here two or three years ago; he now lives on the same land he then did. The Americans all appeared to be acting in concert with the same purpose. The French settlers attend the Militia trainings, and turn out as regularly as the other inhabitants of the Province.

Cross-examined by defendant Hannawell.—I never knew of any of the defendants to interfere with me as a magistrate, or take part in any of the difficulties which occurred previous to this time: have heard you say you were in opposition to Baker and his proceedings; this was before the last meeting; I never have been molested since the meetings, never knew or heard of any of the defendants molesting any of the officers or magistrates of the Province before or since the meetings.

Re-examined.—I speak of two meetings; there was a second meeting: at their second meeting, Hannawell resisted me and bid me defiance, I think at this meeting he endeavoured to influence the French.

Michael Tighe sworn.—I know the defendants, have known Wheelock and Savage three or four years, and Hannawell two or three years, was present at the meeting spoken of by Mr. Rice—the first meeting. I understood the object of the meeting was to choose Town Officers under the Government of the State of Maine; Powers took the lead in the first instance, all three defendants were present; I have been in Court and heard the evidence of the other two witnesses, believe what they have stated to be correct, can say nothing in addition.

Cross-examined by defendant Hannawell.—I did not hear of any of the defendants at the first meeting endeavour to influence the French.

Romaine Micheau called, but not speaking English, Francis Rice was sworn as Interpreter, the witness was then sworn and examined. I know the defendants, have known them over three years, I have lived about three years and a half in Madawaska, on the west side of the River, near Green River below the Chapel; a paper was posted up at my door by John Baker; a paper was then shown to the witness which he said was the same one so put up; the paper was then read and was as follows:

NOTICE.

By a Warrant to me directed, from W. D. Williamson, Esquire, in the County of Penobscot, and State of Maine—This is to notify to the inha-

bitants of the Town of Madawaska, qualified to vote in Town affairs, to assemble at the dwelling house of Mr. Peter Lizotte, on Saturday 20th day of August, 1831, at one o'clock in the afternoon, to act on the following articles, viz :

1. To choose a Moderator of said meeting.
2. To choose a Clerk of said Town.
3. To choose Select-Men.
4. To choose Constables and other Officers.

WALTER POWERS.

By order of the said Justices.

I attended the meeting and was chosen Constable, but declined to act.

Edward W. Miller, Esq. sworn.—I am High Sheriff of the County of York, have been so since 1814, have lived in the Province over 40 years, have always considered the Madawaska settlement in my bailiwick, have constantly executed the King's Process there, have taken the votes of the Inhabitants there at Elections, have never met with any resistance or obstruction in the execution of my duty at all there, I know Capt. Lizotte's house, have always considered it in the Madawaska settlement, and within my bailiwick.

The ATTORNEY GENERAL here put in an Exemplification, under the Great Seal of the Province of Letters Patent, dated 1st October, 1790, granting to Joseph Muzeroll and 48 others, 51 several Lots in the district of Madawaska, in the County of York, being 16,709 acres, which was read. In this Grant Lot No 36 is granted to Pierre Lizotte.

John Roberts sworn.—Stated that he was a Clerk in the Surveyor General's Office of this Province, in the drafting department; that it was within his department to have charge of the Papers, he produced a Book containing the original record of the plan of survey of the Land mentioned in the Grant to Joseph Muzeroll and others, which he said came from among the Records in the office. The plan was put in.

Francis Rice recalled, the plan exhibited to him. Peter Lizotte lives on the Lot called No. 15 granted to John Martin, his house is within the limits of the grant to Muzeroll and others, I am quite sure of it, Simon Aubear, Junr. lives on the Lot which was granted to Pierre Lizotte.

Peter Fraser, Esq. sworn. I have lived in the Province since the year 1784, and am acquainted with the Madawaska settlement, have been there frequently, have known some of the settlers since 1787 or 1788, have always considered them under the Government of this Province. I am Lieut. Col. of the Militia in the district of Madawaska, and a Justice of the Peace for the County of York, and have been so nearly 24 years, I was a member of the Assembly for the County from 1809 to 1827, the inhabitants of Madawaska have voted at every election at which I was chosen, there was formerly a difficulty in their voting on account of the Elector's oath, as they were Catholics, this was removed by the Legislature, they have done Militia duty in the settlement, Parish Officers have been appointed there by the Sessions constantly, I have known Captain Peter Lizotte since 1792 or 3, he was a half brother of Captain Duperré, the founder of the Settlement, I know Captain Lizotte's house, have been there, he has lived 14 or 15 years where he now lives to my knowledge.

James A. Maclauchlan, Esq. sworn.—I have known the defendant Hannawell 7 or 8 years, he lived at the Oromocto when I first knew him, have known the other two defendants two or three years, was not present at the meetings; knows nothing of them except from correspondence.

Cross-examined by defendant Hannawell.—I have no recollection of talking to the Madawaska settlers and telling them I had orders not to interfere if the Americans confined their proceedings to one side of the river.

Question by defendant Wheelock.—Did you not tell Captain Coombes that you had instructions from the Chief Justice of the Province, that if the Ame-

icans confined their proceedings to one side of the river, not to interfere with them?

The witness hesitated to answer the question, as he considered it improper to mention the instructions he received while acting as an officer of the Government, but on being informed that the question was a proper one, he must answer it, said I do not recollect saying this to Captain Coombes, what I did say was, that if the American agents confined their proceedings to the western side of the river I was to protest, and I did protest; this was before the 20th August; by the American agents I meant Messrs. Dean and Kavanagh.

Re-examined. I saw Messrs. Dean and Kavanagh, they told me they had instructions to take an account of the inhabitants, the property, houses and other local information, but they had no authority and did not intend to use any compulsory proceedings, all the information was to be given voluntarily, I told them if they came on the east side of the river, I should take other steps, meaning thereby I should prevent them by force, I conceive they understood it in that sense also; with respect to the west side I protested against their proceedings; this was before any town meeting. I had no allusion to any such meetings when I spoke of protesting only. I remained with Dean and Kavanagh three days.

Henry G. Clopper, Esquire, sworn. I am Register of Deeds and Clerk of the Peace for the County of York, have been so several years; there have been parish officers appointed for the district of Madawaska, as being in the Parish of Kent, sometimes separately for the Madawaska, sometimes not, there are a great many deeds registered in the Register's Office, of lands in the Madawaska settlement, some as much as thirty or thirty-five years back, the inhabitants of Madawaska have constantly applied for and received grain bounty, and still receive it; John Baker received it for the year 1822.

The cause was here closed on the part of the prosecution, and the defendants were informed they were at liberty to address the Court or Jury, and produce evidence.

The defendant Wheelock, addressed a few words to the Court, the purport of which was, that they were misled by the acts of the two officers, meaning Messrs. Maclauchlan and Coombes, and concluded they were not doing wrong so long as they confined themselves to the west side of the river.

The defendants then recalled the witness Leonard R. Coombes—*Examined by defendant Hannawell.* I had a conversation with Captain Maclauchlan at the time that Messrs. Dean and Kavanagh came; he was at my house, and said he was going in pursuit of Dean and Kavanagh; he afterwards told me that he said to these agents, that so long as they confined themselves to the west side of the river in taking their assessment and account of the inhabitants, and the like, he should not interfere with them, further than to protest against their acts, except they exercised an act of sovereignty; I remember the defendant Hannawell asking me what conversation Dean and Kavanagh had with Mr. Maclauchlan; also that I told the said defendant that Mr. Maclauchlan had said to me that he had called at the Chief Justice's on his way up, and that the Chief Justice had recommended him, that as the matter was so near a settlement,* not to interfere with them if they confined themselves to the west side of the river, unless they exercised any act of sovereignty, and that it was better to take no rash steps. I mentioned this to the defendants Savage and Wheelock, before the first town meeting.

The defendants then put in evidence a book as containing the act of the State of Maine, which was read at the first town meeting, and the original warrant which had been also read; no objection being made to their admission, the act and the warrant were read, and are as follows:

* This was very soon after the promulgation of the decision of the King of the Netherlands.

CHAPTER 181.

An Act to incorporate the Town of Madawaska, and for other purposes.

Approved March 15th, 1831.

Sec. 1. Be it enacted by the Senate and House of Representatives, in Legislature assembled, That the Territory known and called by the name of Madawaska, in the Counties of Madawaska and Penobscot, bounded as follows:—Beginning on the boundary line between this State and the Province of New Brunswick, at the north east corner of the township E. on Greenleaf's map, thence to and south of the river St. John; thence west by the north line of Township F. and township K. to the east line of township numbered sixteen, in the then range of townships, west of the east line of the State; thence north by the east line of said Township numbered sixteen, to the north east corner thereof; thence west by the north line of Townships numbered sixteen in the third, fourth, fifth, sixth and seventh ranges, west of the east line of the State, thence continuing the same course until it intersects the River St. John; thence north until the line of it intersects the River Saint Francis; thence by the centre of said river to the Grand Portage, to the line of Canada and this State; thence by the line of Canada as established by the Proclamation of seventeen hundred and sixty-three, by the Commissions to Governors Murray, Carleton, and Haldimand, from seventeen hundred and sixty-three to seventeen hundred and eighty-six, the act of the British Parliament of seventeen hundred and seventy-four, and by the Treaty of Peace in seventeen hundred and eighty-three, to the north-west angle of Nova Scotia, now the north-west angle of the Province of New-Brunswick: thence south by the line established by the Commissions to Governors Wilnot, Campbell, Legge, Hughes, Hammond and Parr, from seventeen hundred and sixty-three to seventeen hundred and eighty-two, by the Treaty of Peace of seventeen hundred and eighty-three, and by the Commissions to Sir Thomas Carleton the first Governor of New Brunswick in seventeen hundred and eighty-four, to the first mentioned bounds, being the east line of the State, on the true meridian north from the monument at the head of the River Saint Croix, be, and the same is incorporated into a town by the name of Madawaska, and the inhabitants of the same Town are hereby subject to the same duties and liabilities, and vested with the privileges and immunities which other incorporate towns are within this State.

Sec. 2. Be it further enacted, That all that first part of the County of Washington which lies within the limits of Madawaska, as described in the first section of this Act, be and hereby is set off from the County of Washington, and annexed to the County of Penobscot.

Sec. 3. Be it further enacted, That any Justice of the Peace within the County of Penobscot, or any Justice whose Commission runs throughout the State, is hereby empowered to issue his warrant to some inhabitant of said town, directing him to notify the inhabitants thereof to meet at such time and place as he shall appoint, to choose such officers as towns are empowered to choose at their annual Town Meetings.

STATE OF MAINE.

PENOBSCOT, 55.

To Walter Powers, of Madawaska, in said County, greeting:

(L. S.) You are hereby required, in the name of the State of Maine, to notify and warn the inhabitants of said town of Madawaska, qualified to vote in town officers, to meet at Peter Lizotte's dwelling house in said town, on Saturday the twentieth day of August, 1831, then and there to act on the following articles, and to transact such other business as may be done before them.

- 1st. To choose a moderator to govern such meeting.
- 2d. To choose a town clerk.
- 3d. To choose select-men.
- 4th. To choose constables and all other town officers.

And you are hereby further required, in the name of said State, to make return of this warrant with your doings thereon at said meeting, at which you will preside until a moderator be chosen.

Given under my hand and seal at Bangor, in said County, this eleventh day of July, in the year of our Lord one thousand eight hundred and thirty-one.

W. D. WILLIAMSON,
Justice of the Peace and Quorum.

Pursuant to the within warrant, I have notified the inhabitants of said Town to meet at the time and place for the purposes within mentioned.

WALTER POWERS, { authorised
 { to notify.

The defendant, Jesse Wheelock, addressed the Jury and said, that after what had now come out it could be seen, that the defendants were under an impression from what the two officers had said, that they were justified in what they were doing, so long as they confined themselves to the west side of the river.

The defendant, Barnabas Hannawell, in his defence said, that having received the warrant, they were obliged under the law of the State of Maine to act, they would have been liable to punishment under their laws if they had declined. That in the situation of the country there was a difficulty on both sides, and of the two evils they thought they had chosen the least, they were led to suppose from what the two officers, Messrs. MacLachlan and Coombes, had said, they would not be interfered with so long as they confined themselves to the west side of the river.

The other defendants declined saying any thing.

The ATTORNEY GENERAL in his reply, said, that as the case was so clearly and distinctly made out by the evidence, he should make but few observations, as he conceived the Jury could have no doubt on their minds; the fact of the conspiring and confederating together for the purposes and with the intention alleged in the indictment, was fully proved by the witnesses who could speak to that part of the case; indeed the defendants had themselves produced this very act and warrant which were read at the meeting, and which shewed distinctly that the intention of the meeting was to subvert the King's authority, and establish that of a foreign government; they had not confined themselves to the American settlers, but they had used their efforts to induce the French inhabitants to depart from their allegiance to the government, under which they had been settled and always lived, and that but for the influence and exertion of Mr. Rice and Mr. Coombes these poor deluded people would probably have been seduced to join with them; that the French inhabitants, though possessed of many excellent qualities, were well known to be a quiet inoffensive set, hating contention, fond of peace, and easily wrought upon by the persuasion of artful men; that however it might operate on the Court in deciding on the punishment, the excuse alleged by the defendants could not have any weight with the Jury, if they were satisfied that the allegations had been substantiated by the witnesses. The act was one of the most deliberate kind, the warrant produced bearing date in July last. There could not be a higher offence committed against the peace of society; the acts amounted to treason, and the defendants, if not British subjects, still owed a temporary allegiance, so long as they remained in the Province under the protection of its laws.

It is not disputed that the territory is claimed by the United States, and it is clear if entitled to it they will get it, the matter has been under a course of investigation by the Governments of the two countries, but until the possession of the country is actually surrendered, the old sovereignty must remain. The doctrine of law as to the cession of countries, is quite clear: even when one nation has actually stipulated by treaty to cede a country to another, there

is no change in the old sovereignty and jurisdiction, until some formal act of cession, and actual transfer and receiving of possession.

The Attorney General then cited the case of the *Famv*, 5 Rob. 100, and also read an extract from Chancellor Kent's *Commentaries on American Law*, p. 100, wherein that eminent lawyer expressly confirms the doctrine of law as set forth by Sir William Scott, and lays it down as a clear principle of jurisprudence, that the sovereignty of the ceding country must continue in force, till an actual surrender of possession.

He then, in a few words, called the attention of the Jury to the fact, that the Madawaska settlement had, ever since the establishment of the Province, been considered as forming an integral part of it, and our laws and no other were in force there; there was no act of the Government as yet which made any change, though it was possible such change might take place, and if so, those settlers who chose to remain might become good citizens of the United States, as they now are good subjects of the King; the defendants may be the instruments of their government, if so, it was exceedingly to be regretted; but their acts could not be overlooked, and have compelled the Officers of the Crown to institute this prosecution.

Mr. JUSTICE CHIPMAN charged the Jury. He stated the substance of the indictment and the nature of the charge; that the offence was called in the language of the law a conspiracy, which may be described in general terms, as an agreement between two or more to do an unlawful act; that the *gist* of the present charge was the criminal intention imputed to the defendants to subvert the government of His Majesty in the place in question, and introduce that of a foreign power, and this intention was charged in the indictment as having been attempted to be carried into effect, by several overt acts specified therein. The learned Judge then stated some general points of law relating to offences of this nature, and informed the Jury, that when several persons are proved to have entered into a combination for a common purpose, the act of any one of them, in furtherance of the common design, is evidence against all.

The learned Judge then proceeded to read over the whole of the testimony of the witnesses, and commented briefly upon it as he went on. He also read the documents adduced by the defendants, viz. the Acts of the Legislature of the State of Maine, incorporating the whole of the Madawaska settlement, as well on the east as the west side of the River St. John, and the warrant for holding the town meeting also for Madawaska generally. He then proceeded to remark, that although the defendants might be American citizens, yet they owed a temporary allegiance while within our jurisdiction, and as they were also entitled to the benefit of our laws, the Jury should give the case the same impartial consideration, as if they were their natural born fellow subjects. The case appeared to be fully made out in evidence; indeed the defendants themselves did not deny the acts or the intentions with which they are charged; they admit that it was their intention to set up another government in the Madawaska settlement; and that, in itself, must be a direct subversion of the government of His Majesty. The authority of the governing power in any country must of necessity be exclusive and supreme, and cannot admit of a competition. The reasons which the defendants allege for their conduct, might perhaps be taken into consideration in a future stage of the proceedings, if they should be convicted, but these cannot avail them on their trial before the Jury.

As to the national character of the place, the learned Judge stated, that the only thing to be enquired into on this occasion is the *fact* of the settlement being within the jurisdiction of this Province, or not. He particularly adverted to the testimony of Messrs. Fraser, Clopper, Miller, and to the grant of 1790, by the Government of this Province, of the very land on which the seditious meeting was held, and stated that it was too clear to admit of the slightest doubt, that, in *point of fact*, the Madawaska settlement had been continually

under the jurisdiction of this Province ever since its first establishment, and that there had been no act by which this jurisdiction had been charged, and another introduced. He considered it as clearly established by the authorities cited by the Attorney General, that even when a place is expressly and without question ceded by Treaty, the sovereignty of the ceding country does not cease, until the formal act of surrender and transfer takes place; and he laid it down as the clear rule of public law, applicable to the circumstances of the case now in question, *that the existing British sovereignty and jurisdiction can be changed only by a public Act of the King's Government for that purpose.* That it was not for this Court to animadvert upon the acts of the authorities of the State of Maine given in evidence; it was sufficient to say, that the Court cannot regard them.

The learned Judge then proceeded to notice the evidence given as to the acts and declarations of Mr. Maclauchlan, and said, that although this gentleman might have been employed for a particular purpose with regard to this District, yet no acts or declarations of his, or of any other individual officer of the Government, could operate *to change the sovereignty of the place*; that it appeared, however, although Mr. Maclauchlan's instructions were such as not to induce him to use force to prevent the American Agents, with whom he had to deal, from collecting such statistical information from the inhabitants on the western side of the river, as these inhabitants would voluntarily furnish, yet that he was required to protest against any such proceedings, and that he did accordingly protest; and he told Coombes that he was directed not to allow any act of sovereignty on the part of the American Government.

The learned Judge then left the case to the Jury, to consider of their verdict, and if the matters alleged in the Indictment were made out to their satisfaction, to pronounce accordingly.

The Jury retired from the Bar about 4 o'clock, and in a short time returned finding the three defendants *Guilty.*

Tuesday, October 18, 1831.

PRESENT :

His Honor The CHIEF JUSTICE,
Mr. Justice BLISS,
Mr. Justice BOTSFORD,
Mr. Justice CHIPMAN.

The defendants Barnabas Hannawell, Daniel Savage, and Jesse Wheelock, being present, pursuant to notice, to receive sentence, and being asked whether they had any thing to offer to the Court, answered in the negative.

His Honor Mr. JUSTICE CHIPMAN addressed them, and observed :—That it was sufficient merely to state the charge of which they had been found guilty, to shew its aggravated character, without adding a word of comment. It was no less than a direct attempt to subvert the authority of the Government, and to introduce the jurisdiction of a foreign State. That the defendants had to say in their extenuation that they were not the original authors of these proceedings; they appeared certainly to be instruments in the hands of others. They also set up in their defence a colour of justification which they contended was given to their proceedings by the acts and declarations of a person in the character of a British Officer. These acts and declarations, however, went no further than to abstain from preventing by force proceedings not amounting to acts of sovereignty, of certain American agents on the western side of the river St. John. The defendants appeared to be persons not wanting in understanding and discretion, and must have perceived the difference between the proceedings of the American agents alluded to, and their own doings, which although they took place on the western side of the river, were nevertheless expressly founded on an Act of the Legislature of Maine,

which extended to the whole territory on both sides of the river, to the extreme line, which it was notorious the Americans claimed as their boundary, and which would, doubtless, have been taken advantage of as being acts of jurisdiction to the whole extent of such claim. The learned Judge here repeated what he had stated to the Jury on the trial, that no such proceedings as those he had alluded to, either on the part of the British or American authorities, could be admitted to charge the sovereignty and national character of the place. That it had now, for the second time, been most satisfactorily proved in this Court, (once before in the case of John Baker,) that this Province had exercised an uninterrupted jurisdiction, ever since its first erection, over the Madawaska settlement. That if the time should arrive when this territory or any part of it was to be given up to the United States or any foreign country, this circumstance must, and would be announced by some public Act of the British Government, which would make known to the inhabitants the transfer of the country, and the change of their allegiance. That until such public act came, this Court must and would maintain the jurisdiction it had been accustomed to exercise. The learned Judge further stated, that there was another consideration which should have been well weighed by the defendants. The defendants, although professing to be American citizens, and therefore not supposed to feel the same attachment to the British Crown, even while living within the limits of its jurisdiction, as to the country of their birth, yet should have abstained from bringing into jeopardy the numerous French inhabitants of the Madawaska settlement, by seducing them from their natural allegiance; these inhabitants were natural born British subjects, and so far as the duties of allegiance were concerned, stood in the same relation to the Crown, as the Judges on this Bench, or any person in this Court. He further said, that the doctrine which the Court now asserted with respect to maintaining the actual jurisdiction of the Provincial authorities, was the same which it had acted upon in the case of John Baker. The correctness of it he conceived was unquestionable, and to his knowledge had never been denied by any authority, British or American. The defendants, in the face of that case, had proceeded to attempt a further subversion of that jurisdiction; and although the Court was not disposed to inflict upon them unnecessary pains and inconvenience, yet they must be prepared to bear the penal consequences of their own acts. The Court in awarding their punishment, aimed at an effectual, but at the same time a temperate assertion of the authority of the laws, such as it appeared to them the case, under all its circumstances, required; and concluded by pronouncing the sentence of the Court as follows:

That each of the Defendants do pay a fine to the King of Fifty Pounds, and be imprisoned in the Common Gaol of the County for Three Calendar Months, and stand committed until the said fines are paid.

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UPPER
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